Doc.
ITC1.12:
337-TA-23

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

The Library of the
MAR 6 1996
University of Illinois
Urbana-Champaign

[ 337-TA-23 ]

CERTAIN COLOR TELEVISION RECEIVING SETS

Notice of Consent Orders and Termination of Investigation

Notice is hereby given that--

(1) The Commission hereby issues the attached orders as final orders in this investigation, thereby terminating the investigation. The orders are the subject of agreement between the Commission investigative attorney, the complainants--GTE Sylvania, Inc., and Philco Consumer Electronics Corp., and the respondents--Tokyo Shibaura Electric Co., Ltd.; Toshiba America, Inc.; Hitachi, Ltd.; Hitachi Kaden Hanbai Kabushiki Kaisha; Hitachi Sales Corp. of America; Sharp Corp.; Sharp Electronics Corp.; Sanyo Electric Co., Ltd.; Sanyo Electric, Inc.; Sanyo Electric Trading Co., Ltd.; Mitsubishi International Corp.; and Mitsubishi Electric Sales Corp.

(2) These orders are issued under the authority of sections 337 and 333 of the Tariff Act of 1930, as amended (19 U.S.C. 1337 and 1333), and under the applicable provisions of the Administrative Procedure Act (5 U.S.C. 551 et seq.). The Commission retains jurisdiction under section 337 to enforce these orders in the manner provided therein. These orders are issued on the basis of the consent of the parties, and do not constitute a determination of whether there is a violation of section 337 in this investigation. In entering into these orders, the parties have waived their rights to such a determination to be made after opportunity for a hearing and decision on notice and in accordance with the Administrative Procedure Act and part 210 of the Commission's Rules of Practice and Procedure, as amended (19 CFR Part 210).

(3) In issuing these orders, the Commission hereby waives the requirement of section 210.51(c) of its Rules (19 CFR 210.51(c)) pursuant to section 201.4(b) of the Rules (19 CFR 201.4(b)), having determined that there is good and sufficient reason therefor. However, compliance with these orders will be subject to further amendments to the Commission's Rules to govern proceedings of this nature.

(4) These orders do not constitute precedent for any future order of the Commission.

(5) The texts of the orders are attached.

By order of the Commission:

Kenneth R. Mason
Secretary

Issued: July 29, 1977

## CERTIFICATE OF SERVICE

I, Kenneth R. Mason, hereby certify that the attached NOTICE OF CONSENT ORDERS & TERMINATION OF INVESTIGATION was served upon Wilhelm Zeitler, Esq., personally, and upon the following parties via first class mail, on July 29, 1977.

Kenneth R. Mason, Secretary
U.S. International Trade Commission
701 E Street, N.W.
Washington, D.C. 20436

Preston Brown, Esq.
Curtis, Mallet-Prevost, Colt & Mosle
888 17th Street, N.W.
Washington, D.C. 20006

Robert D. Piliero, Esq.
Curtis, Mallet-Prevost, Colt & Mosle
100 Wall Street
New York, N.Y. 10005

H. William Tanaka, Esq.
Lawrence Walders, Esq
Tanaka, Walders & Ritger
Federal BVr Building West
1819 H Street, N.W.
Washington, D.C. 20006

Bruce Clubb, Esq.
Bruce H. Jackson, Esq.
Baker & McKenzie
815 Connecticut Avenue
Washington, D.C. 20006

Charles F. Schirmeister, Esq.
Reid & Priest
40 Wall Street
New York, N.Y. 10005

John T. Dolan, Esq.
Crummy, Del Deo, Dolan & Purcell
Gateway I
Newark, N.J. 07102

Peter Gartland, Esq
Wender, Murase & White
400 Park Avenue
New York, N.Y. 10022

William L. Dickey, Esq.
Wender, Murase & White
1800 M Street, N.W., Suite 1080
Washington, D.C. 20036

Robert H. Huey, Esq
Arent, Fox, Kintner, Plotkin & Kahn
1815 H Street, N.W.
Washington, D.C. 20006

David Vaughan, Esq.
Mudge, Rose, Guthrie & Alexander
1701 Pa. Avenue, N.W.
Washington, D.C. 20006

Donald J. Zoeller, Esq.
John P. Hederman, Esq.
Mudge. Rose, Guthrie & Alexander
20 Broad Street
New York, N.Y. 10005

Gail T. Cumins, Esq.
Sharretts, Paley, Carter & Blauvelt
80 Broad Street
New York, N.Y. 10004

Donald Campbell Brown, Esq.
Whitman & Ranson
522 Fifth Avenue
New York, N.Y. 10036

Additional Copies to:

John T. Fischbach, Esq.
Asst to Gen Counsel for Intl Affairs
Federal Trade Commission
6th & Pa. Ave., N.W.
Washington, D.C. 20580

Joel Davidow, Esq.
Chief Foreign Commerce Section
Antitrust Division
Department of Justice
Tenth & Pa. Ave. N.W.
Washington, D.C. 20530

Bernard Feiner, Esq.
Assistant General Counsel
Dept of Health, Education
and Welfare
5360 North Building
Washington, D.C. 20201

UNITED STATES INTERNATIONAL TRADE COMMISSION

WASHINGTON, D.C.

| | | |
|---|---|---|
| In the Matter of<br>Certain Color Television<br>Receiving Sets | : | Investigation No.<br>337-TA-23 |

CONSENT ORDER

Complainants GTE Sylvania Incorporated and Philco Consumer Electronics Corporation, having filed a Complaint and Consolidated Amended Complaint; and

The United States International Trade Commission ("Commission") having initiated an investigation pursuant to Notices of Investigation; and

The respondents having appeared and denied the material allegations of the Complaint and Consolidated Amended Complaint; and

The Commission having determined it has jurisdiction of the subject matter of this proceeding and the Commission having determined that the Consolidated Amended Complaint states a cause of action under Section 337 of the Tariff Act of 1930, 19 U.S.C. Section 1337 and all acts amendatory thereof and supplementary thereto; and

Before the making of any findings of fact or conclusions of law, and before the hearing or adjudication of any issue of fact or law herein, and the respondents having denied any violation of Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C.

Section 1337 ("Section 337"), or as alleged in the Complaint and Consolidated Amended Complaint, and all of the parties hereto having consented to the entry of this Consent Order;

IT IS HEREBY ORDERED THAT:

I
(Tariff Act of 1930)

The Commission has, and respondents concede that the Commission has, jurisdiction of the subject matter of this investigation and over the respondents signatory hereto for the purposes of issuing and enforcing this Consent Order, and the Protective Order dated September 17, 1976.

II
(Settlement Purposes Only)

This Consent Order is for settlement purposes only and does notconstitute a determination by the Commission or an admission by respondents that the law has been violated as alleged in the Complaint and Consolidated Amended Complaint or Notices of Investigation or otherwise.

III
(Definitions)

As used in this Consent Order:

(A) "Complainants" shall mean GTE Sylvania Incorporated and Philco Consumer Electronics Corporation, and each of them.

(B) "Respondents" shall mean

(1) Sharp Corporation, and

(2) Sharp Electronics Corporation

(C) "Person" shall mean an individual, or any non-governmental partnership, firm, association, corporation or other legal or business entity other than the above respondents or their majority owned and/or controlled subsidiaries, their successors or assigns.

(D) "United States" shall mean the fifty States, the District of Columbia and Puerto Rico.

(E) "Color Television Receiving Set" shall mean any color television receiving set manufactured in any country other than the United States for shipment or export to the United States for resale in the United States or for import into the United States for resale in the United States. Color television receiving sets shall include:

(1) A finished color television receiving set which at the time of importation is fully assembled, whether or not tested or packaged, for distribution to the purchaser as a color television receiving set; and

(2) A color television receiving set which at the time of importation is not fully assembled, whether or not in the cabinet, but substantially complete as a finished color television receiving set, as defined in Subsection (1) above, at least to the point where the color picture tube is in place as part of the set; and

(3) A kit which at the time of importation contains all of the components necessary to make it a color television receiving set as defined in Subsections (1) and (2) above.

IV
(Applicability)

The provisions of this Consent Order shall apply to each respondent and to each of its officers, directors, employees, controlled (whether by stock ownership or otherwise) and/or majority owned business entities, successors and assigns, and to each of them, and to all other persons who receive actual notice of this Consent Order by service in accordance with Section XI hereof.

V
(Individual Conduct Prohibited)

A respondent shall not:

(1) Sell any color television receiving set or sets in the United States or for shipment or export to the United States, for resale in the United States at any price in a predatory manner as defined by United States law; or

(2) Give to any person a discount, allowance, credit, rebate, gratuity, financing and credit benefit, or any other monetary inducement to purchase, or other deduction or term which results directly or indirectly in a reduction of the price of a color television receiving set sold in the United States or for shipment or export to the United States, for resale in the United States, for which appropriate descriptive financial records are not maintained by respondent; or

(3) Unlawfully hinder, restrict, limit or prevent directly or through another, any company incorporated in the United States or any subsidiary thereof from buying or selling color television receiving sets from or to any other person in the United States or in Japan in a manner which has an effect on

United States commerce and which is in connection with the importation of color television receiving sets into the United States or the sale of such imported sets in the United States or for shipment or export to the United States for resale in the United States.

VI
(Concerted Conduct Prohibited)

A respondent in connection with the importation of color television receiving sets into the United States or for shipment or export to the United States for resale in the United States shall not unlawfully with any other person or persons, initiate, enter into, adhere to, maintain or further, directly or indirectly, any contract, agreement, combination, conspiracy, understanding, plan or program, for the purpose or with the effect of:

(1) Raising, lowering, fixing, determining, establishing, controlling, maintaining or stabilizing the price, price level, price ceiling, price floor, net price, discount, rebate, allowance, mark-up, profit margin, warranty, or any term or condition of sale at which any other person sells any color television receiving set in the United States or for shipment or export to the United States for resale in the United States; or

(2) Allocating, dividing, rotating, apportioning, assigning, limiting or imposing or attempting to impose any limitations or restrictions respecting (a) the person or persons to whom, or (b) the markets or territories in which, or (c) the volume at which any person may sell color television receiving sets in the United States or for shipment or export to the United States for resale in the United States; or

(3) Hindering, restricting, limiting, or preventing any person from buying or selling color television receiving sets from or to any other person in the United States in a manner which has an effect on United States commerce.

VII
(Reporting)

With respect to each of the five consecutive fiscal years the first of which begins in 1977, each respondent shall separately reveiw, determine and report in English under oath to the Commission, on an annual basis, the following: (1) total unit volume of all color television receiving sets sold in the United States or for shipment or export to the United States for resale in the United States, (2) total unit volume in each screen size for such color television receiving sets, (3) aggregated revenues for all such color television receiving sets, (4) aggregated revenues in each screen size for such color television receiving sets, (5) total aggregated costs as defined in Appendix A for such color television receiving sets, (6) total aggregated costs as defined in Appendix A in each screen size for such color television receiving sets, and (7) whether any such color television receiving set has been sold for less than the total variable costs of such set.

The reports provided for herein shall contain a statement of the manner in which such review and determination was conducted and the factors that were considered, including the methods or method of cost allocation. All amounts set forth in such reports shall be expressed in United States dollars, with disclosure

of any exchange rate(s) used to calculate such dollar amounts, including the date(s) on which such rate(s) were controlling.

In addition, respondent shall provide a statement of its independent United States auditor that the independent United States auditor has reviewed respondent's records in conjunction with its annual audit and that the independent United States auditor has reviewed the report required hereby and on the basis of such annual audit does not find any inconsistency between the data in the report and any information which it learned during its annual audit.

Such report, containing the information provided for in items (1) through (7) of the first paragraph of this Section VII, with the oath of the respondent and the statement of the independent United States auditor, shall be delivered to the Commission not later than one hundred and fifty (150) days after the close of each fiscal year, provided, however, that a preliminary report containing the information required under items (1), (2), (3) and (4) of the first paragraph of this Section VII shall be delivered to the Commission not later than ninety (90) days after the close of each fiscal year. Further, a special report containing the information provided for in items (1) through (7) of the first paragraph of this Section VII and covering the period from the effective date of this Consent Order to September 30, 1977, shall be filed with the Commission by December 31, 1977. However, the special report need not include a statement of the independent United States auditor.

All such reports delivered pursuant to the provisions of this Section shall be maintained for a period of five (5) years after the date of such delivery but no later than seven (7) years after the effective date of this Order and thereafter the reports shall be returned to the filing respondents.

All such reports shall be deemed to be proprietary and business confidential and no information contained in or obtained from any such report shall be divulged by any representative of the Commission to any person other than a duly authorized representative of the Commission, except as required in the course of a legal proceeding or as otherwise required by law upon reasonable written notice to the respondents.

In determining whether a respondent is in compliance with the provisions of Sections V and VI hereof, the Commission may consider evidence that the information provided in the reporting requirements of this Section VII is incomplete or inaccurate.

VIII
(Inspection and Compliance)

(A) In determining whether there has been compliance with the prohibitions of this Consent Order, the Commission may consider evidence of any material differences between the revenues and costs reported pursuant to the reporting requirements of Section VII hereof. Further, in determining whether there has been compliance with the provisions of this Consent Order, the Commission may consider evidence of all special economic and competitive circumstances presented by any respondent.

(B) For the purposes of securing compliance with this Consent Order, each respondent shall retain any and all records made and received in the usual and ordinary conduct of its color television receiving set business, whether in detail or in summary form, for a period of three (3) years from the close of the fiscal year to which they pertain, and in summary form for a period of seven (7) years from the close of the fiscal year to which they pertain from which the accuracy of the statements and reports described in Section VII above, may be determined, provided, however, that no such record need be retained for more than two years from the close of the last fiscal year for which a report is required.

(C) For the purpose of determining or securing compliance with this Consent Order, and for no other purposes, and subject to any privilege recognized by federal courts of the United States, during the period from filing the first report required herein up to and including two years from the close of

the last fiscal year for which a report is required, duly authorized representatives of the Commission shall, upon reasonable written notice by the Commission or its staff, to any respondent made, be permitted access to and the right to inspect and copy in said respondent's principal office during the office hour of said respondent, and in the presence of counsel or other representative if said respondent chooses, all books, ledgers, accounts, correspondence, memoranda, and other records and documents, both in detail and in summary form, in the possession of or under the control of said respondent relating to any of the matters contained in this Consent Order and further shall have access to and the right to inspect and copy the records of respondents' independent United States auditors used in reporting upon respondents' reports required in Section VII hereof.

(D) Each respondent shall make available for consultation with the duly authorized representative of the Commission, in the presence of counsel, the individual or individuals who were responsible for the preparation of the report described in Section VII hereof and/or who have knowledge of the substance of the matters contained therein.

(E) No information obtained by the means provided in Section VIII shall be divulged by any representative of the Commission to any person other than a duly authorized representative of the Commission, except as required in the course of legal proceedings to which the Commission is a party for the purpose of securing compliance with this Consent Order or as otherwise required by law, upon reasonable written notice to respondents or their United States counsel.

IX
(Governmental Action)

This Consent Order shall not prohibit compliance with any order or direction of any government, governmental body or agency having jurisdiction over a respondent, provided, however, that such compliance shall not constitute a defense to a violation of this Consent Order except insofar as such a defense is recognized under United States law.

Nothing contained in this Consent Order shall be construed to constitute a waiver of any defense recognized under the laws of the United States, which a respondent may have as a result of compliance with any order or directive of any government, governmental body or agency having jurisdiction over such respondent.

Compliance by any respondent with any order or directive of the Japanese Government issued in implementation of and in accordance with the provisions of the agreement between the Government of the United States of America and the Government of Japan relating to color television receivers as set forth in notes between said governments dated May 20, 1977, shall not be a violation of this Consent Order.

X
(Enforcement)

Each provision of this Consent Order shall be construed independently of any other provision, and compliance with any one provision shall not excuse a violation of any other provision.

Should the Commission have reason to believe that a violation has occurred, a hearing shall be held upon notice. The issues at the hearing shall be: (a) whether a violation has occurred in fact, and (b) if so, a determination of the appropriate remedy. In determining whether there has been a violation, the Commission may consider evidence of any special competitive or economic circumstances presented by any respondent in defense of the alleged violation.

Nothing contained herein shall limit any right of review provided by law.

XI
(Service of Consent Order)

Each respondent is ordered and directed to:

(A) Serve, within thirty (30) days after the effective date of this Consent Order, a conformed copy of this Consent Order upon each of its respective officers, directors, managing agents, agents, and employees who have any responsibility for the marketing, distribution or sale of such respondent's color television receiving sets in the United States or for shipment or export to the United States for resale in the United States;

(B) Serve, within thirty (30) days after the succession of any of the persons referred to in Section XI(A) above, a conformed copy of this Consent Order upon each successor;

(C) Maintain such records as will show the name, title and address of each such officer, director, managing agent, agent and employee upon whom the Consent Order has been served, as described in Section XI(A) and (B) above, together with the date on which service was made; and

(D) The obligations set forth in Section XI(B) and (C) above shall remain in effect for a period of seven (7) years after the effective date of this Consent Order.

XII
(Effective Date)

This Consent Order is to become effective as of the date of its issuance by the Commission. Its provisions shall not apply to color television receiving sets imported and sold by respondents prior to such issuance, except that such sets which are imported and sold in the period from the beginning of the fiscal year beginning in 1977 but prior to the issuance of this Consent Order shall be included for the purpose of compliance with items (3) and (5) of the first paragraph of Section VII above.

Its provisions also shall not apply to color television receiving sets sold by a respondent to a United States customer for importation into the United States prior to such issuance, except such sets which are delivered and paid for in the period from the beginning of the fiscal year beginning in 1977 but prior

to such issuance shall be included for the purpose of compliance with items (3) and (5) of the first paragraph of Section VII, above.

XIII
(Modification)

This Consent Order constitutes a settlement and resolution of Investigation No. 337-TA-23 and the Complaint and the Consolidated Amended Complaint, and does not constitute a determination of any of the factual or legal issues raised in the proceeding or an admission that any respondent has engaged in the conduct prohibited hereby, or an admission that said conduct violates Section 337. Any of the parties to this Consent Order may apply to the Commission at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Consent Order, for the amendment or modification of any of the provisions thereof, or for the enforcement or compliance therewith.

Dated: July 29, 1977

By Order of the Commission:

Kenneth R. Mason
Secretary

The above Order is
Consented to:

For Complainants:

By: Edward J. Goldstein
Edward J. Goldstein

CURTIS, MALLET-PREVOST, COLT & MOSLE

By: _____

Counsel for GTE Sylvania Incorporated
and Philco Consumer Electronics
Corporation

For Respondents:

WENDER MURASE & WHITE

By: _____

Counsel for Sharp Corporation and
Sharp Electronics Corporation

For Commission Investigative Staff:

By: _____
Commission Investigative Attorney

APPENDIX A

This Appendix A is for reporting purposes only and neither this Appendix A, nor anything set forth in this Consent Order, constitutes a concession or admission by any respondent regarding a standard of cost pursuant to which a finding of predatory pricing may be made.

Total costs attributable to color television receiving sets for reporting purposes shall include (1) all costs directly related to the manufacture, marketing and sale of such color television receiving sets, and (2) an appropriate allocation of all costs incurred by respondents related in part to the manufacture, marketing and sale of color television receiving sets and related in part to a product or business other than color television receiving sets, and (3) an appropriate allocation of all other costs incurred by respondents that are not related specifically to any product or business. All costs and all allocated costs shall be determined on the basis of generally accepted United States accounting principles applied on a consistent basis.* It is expressly provided, however, that nothing contained herein shall require any respondent to change its existing accounting systems and methods. Consistent with the foregoing, costs shall include, but will not be limited to, the following:

---

*The "Special Report" provided for under Section VII of this Consent Order shall be in accordance with generally accepted United States accounting principles. However, it will not constitute non-compliance with this Consent Order if annual reports prepared subsequent to the Special Report are not prepared on a basis consistent with the Special Report.

1. Materials (including integrated circuits, transistors, diodes, printed circuit board, resistors (fixed and potentiometers), capacitors (ceramic, electrolytic, wound film), coils and transformers, cathode ray tube, deflection yoke, cabinet, tuner, metal components, plastic components, speaker, and miscellaneous components).

2. Direct labor (including skilled, semiskilled and unskilled production, technician, testing personnel and an allocation of fringe benefits such as bonuses and incentives, vacations, holidays, health care, pension, paid sick leave and other time off, group insurance, employee welfare, disability/wage continuation, etc.).

3. Factory indirect labor (including semiskilled, skilled labor, technicians, craftsmen, foremen, and an appropriate allocation of fringe benefits such as referred to in Paragraph 2 above).

4. Distribution costs outside the United States (including warehousing, handling, transportation and insurance).

5. Export expenses (including cartage/drayage, shipping charge, and brokerage charge).

6. Shipping costs (including ocean freight, insurance, duties and customs clearance charges).

7. Distribution costs in the United States (including warehousing, handling, freight-in and insurance).

8. Marketing and sales costs in the United States and outside the United States (including freight-out, commissions/

bonuses/sales salaries, incentives, cooperative advertising expense, customer financing, warranty, rebates, sales administration, reserve for bad debts arising from the sale of color television receivers occurring on or after the effective date of this Consent Order, sales returns and allowances and all deductions from revenues not accounted on invoices).

9. Factory overhead (including supplies/expenses, tooling and utility costs, occupancy costs, testing/qc/burn-in, general overhead, plant management, accounting, personnel, quality control supervision, industrial engineering, production engineering, maintenance, purchasing/procurement, inventory control, depreciation, taxes other than income taxes, interest, product design, product engineering, and royalties).

10. General administrative costs (including divisional and corporate-wide expenses such as home office administrative costs, interest, taxes other than income taxes, research and development, product design and product engineering, accounting and auditing and legal incurred in the ordinary course of business, public relations and administrative salaries).

UNITED STATES INTERNATIONAL TRADE COMMISSION

WASHINGTON, D.C.

| | | |
|---|---|---|
| In the Matter of<br>Certain Color Television<br>Receiving Sets | : | Investigation No.<br>337-TA-23 |

CONSENT ORDER

Complainants GTE Sylvania Incorporated and Philco Consumer Electronics Corporation, having filed a Complaint and Consolidated Amended Complaint; and

The United States International Trade Commission ("Commission") having initiated an investigation pursuant to Notices of Investigation; and

The respondents having appeared and denied the material allegations of the Complaint and Consolidated Amended Complaint; and

The Commission having determined it has jurisdiction of the subject matter of this proceeding and the Commission having determined that the Consolidated Amended Complaint states a cause of action under Section 337 of the Tariff Act of 1930, 19 U.S.C. Section 1337 and all acts amendatory thereof and supplementary thereto; and

Before the making of any findings of fact or conclusions of law, and before the hearing or adjudication of any issue of fact or law herein, and the respondents having denied any violation of Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C.

Section 1337 ("Section 337"), or as alleged in the Complaint and Consolidated Amended Complaint, and all of the parties hereto having consented to the entry of this Consent Order;

IT IS HEREBY ORDERED THAT:

I
(Tariff Act of 1930)

The Commission has, and respondents concede that the Commission has, jurisdiction of the subject matter of this investigation and over the respondents signatory hereto for the purposes of issuing and enforcing this Consent Order, and the Protective Order dated September 17, 1976.

II
(Settlement Purposes Only)

This Consent Order is for settlement purposes only and does notconstitute a determination by the Commission or an admission by respondents that the law has been violated as alleged in the Complaint and Consolidated Amended Complaint or Notices of Investigation or otherwise.

III
(Definitions)

As used in this Consent Order:

(A) "Complainants" shall mean GTE Sylvania Incorporated and Philco Consumer Electronics Corporation, and each of them.

(B) "Respondents" shall mean

(1) Hitachi, Ltd.,

(2) Hitachi Kaden Hanbai Kabushiki Kaisha, and

(3) Hitachi Sales Corporation of America

(C) "Person" shall mean an individual, or any non-governmental partnership, firm, association, corporation or other legal or business entity other than the above respondents or their majority owned and/or controlled subsidiaries, their successors or assigns.

(D) "United States" shall mean the fifty States, the District of Columbia and Puerto Rico.

(E) "Color Television Receiving Set" shall mean any color television receiving set manufactured in any country other than the United States for shipment or export to the United States for resale in the United States or for import into the United States for resale in the United States. Color television receiving sets shall include:

(1) A finished color television receiving set which at the time of importation is fully assembled, whether or not tested or packaged, for distribution to the purchaser as a color television receiving set; and

(2) A color television receiving set which at the time of importation is not fully assembled, whether or not in the cabinet, but substantially complete as a finished color television receiving set, as defined in Subsection (1) above, at least to the point where the color picture tube is in place as part of the set; and

(3) A kit which at the time of importation contains all of the components necessary to make it a color television receiving set as defined in Subsections (1) and (2) above.

IV
(Applicability)

The provisions of this Consent Order shall apply to each respondent and to each of its officers, directors, employees, controlled (whether by stock ownership or otherwise) and/or majority owned business entities, successors and assigns, and to each of them, and to all other persons who receive actual notice of this Consent Order by service in accordance with Section XI hereof.

V
(Individual Conduct Prohibited)

A respondent shall not:

(1) Sell any color television receiving set or sets in the United States or for shipment or export to the United States, for resale in the United States at any price in a predatory manner as defined by United States law; or

(2) Give to any person a discount, allowance, credit, rebate, gratuity, financing and credit benefit, or any other monetary inducement to purchase, or other deduction or term which results directly or indirectly in a reduction of the price of a color television receiving set sold in the United States or for shipment or export to the United States, for resale in the United States, for which appropriate descriptive financial records are not maintained by respondent; or

(3) Unlawfully hinder, restrict, limit or prevent directly or through another, any company incorporated in the United States or any subsidiary thereof from buying or selling color television receiving sets from or to any other person in the United States or in Japan in a manner which has an effect on

United States commerce and which is in connection with the importation of color television receiving sets into the United States or the sale of such imported sets in the United States or for shipment or export to the United States for resale in the United States.

VI
(Concerted Conduct Prohibited)

A respondent in connection with the importation of color television receiving sets into the United States or for shipment or export to the United States for resale in the United States shall not unlawfully with any other person or persons, initiate, enter into, adhere to, maintain or further, directly or indirectly, any contract, agreement, combination, conspiracy, understanding, plan or program, for the purpose or with the effect of:

(1) Raising, lowering, fixing, determining, establishing, controlling, maintaining or stabilizing the price, price level, price ceiling, price floor, net price, discount, rebate, allowance, mark-up, profit margin, warranty, or any term or condition of sale at which any other person sells any color television receiving set in the United States or for shipment or export to the United States for resale in the United States; or

(2) Allocating, dividing, rotating, apportioning, assigning, limiting or imposing or attempting to impose any limitations or restrictions respecting (a) the person or persons to whom, or (b) the markets or territories in which, or (c) the volume at which any person may sell color television receiving sets in the United States or for shipment or export to the United States for resale in the United States; or

(3) Hindering, restricting, limiting, or preventing any person from buying or selling color television receiving sets from or to any other person in the United States in a manner which has an effect on United States commerce.

VII
(Reporting)

With respect to each of the five consecutive fiscal years the first of which begins in 1977, each respondent shall separately reveiw, determine and report in English under oath to the Commission, on an annual basis, the following: (1) total unit volume of all color television receiving sets sold in the United States or for shipment or export to the United States for resale in the United States, (2) total unit volume in each screen size for such color television receiving sets, (3) aggregated revenues for all such color television receiving sets, (4) aggregated revenues in each screen size for such color television receiving sets, (5) total aggregated costs as defined in Appendix A for such color television receiving sets, (6) total aggregated costs as defined in Appendix A in each screen size for such color television receiving sets, and (7) whether any such color television receiving set has been sold for less than the total variable costs of such set.

The reports provided for herein shall contain a statement of the manner in which such review and determination was conducted and the factors that were considered, including the methods or method of cost allocation. All amounts set forth in such reports shall be expressed in United States dollars, with disclosure

of any exchange rate(s) used to calculate such dollar amounts, including the date(s) on which such rate(s) were controlling.

In addition, respondent shall provide a statement of its independent United States auditor that the independent United States auditor has reviewed respondent's records in conjunction with its annual audit and that the independent United States auditor has reviewed the report required hereby and on the basis of such annual audit does not find any inconsistency between the data in the report and any information which it learned during its annual audit.

Such report, containing the information provided for in items (1) through (7) of the first paragraph of this Section VII, with the oath of the respondent and the statement of the independent United States auditor, shall be delivered to the Commission not later than one hundred and fifty (150) days after the close of each fiscal year, provided, however, that a preliminary report containing the information required under items (1), (2), (3) and (4) of the first paragraph of this Section VII shall be delivered to the Commission not later than ninety (90) days after the close of each fiscal year. Further, a special report containing the information provided for in items (1) through (7) of the first paragraph of this Section VII and covering the period from the effective date of this Consent Order to September 30, 1977, shall be filed with the Commission by December 31, 1977. However, the special report need not include a statement of the independent United States auditor.

All such reports delivered pursuant to the provisions of this Section shall be maintained for a period of five (5) years after the date of such delivery but no later than seven (7) years after the effective date of this Order and thereafter the reports shall be returned to the filing respondents.

All such reports shall be deemed to be proprietary and business confidential and no information contained in or obtained from any such report shall be divulged by any representative of the Commission to any person other than a duly authorized representative of the Commission, except as required in the course of a legal proceeding or as otherwise required by law upon reasonable written notice to the respondents.

In determining whether a respondent is in compliance with the provisions of Sections V and VI hereof, the Commission may consider evidence that the information provided in the reporting requirements of this Section VII is incomplete or inaccurate.

VIII
(Inspection and Compliance)

(A) In determining whether there has been compliance with the prohibitions of this Consent Order, the Commission may consider evidence of any material differences between the revenues and costs reported pursuant to the reporting requirements of Section VII hereof. Further, in determining whether there has been compliance with the provisions of this Consent Order, the Commission may consider evidence of all special economic and competitive circumstances presented by any respondent.

(B) For the purposes of securing compliance with this Consent Order, each respondent shall retain any and all records made and received in the usual and ordinary conduct of its color television receiving set business, whether in detail or in summary form, for a period of three (3) years from the close of the fiscal year to which they pertain, and in summary form for a period of seven (7) years from the close of the fiscal year to which they pertain from which the accuracy of the statements and reports described in Section VII above, may be determined, provided, however, that no such record need be retained for more than two years from the close of the last fiscal year for which a report is required.

(C) For the purpose of determining or securing compliance with this Consent Order, and for no other purposes, and subject to any privilege recognized by federal courts of the United States, during the period from filing the first report required herein up to and including two years from the close of

the last fiscal year for which a report is required, duly authorized representatives of the Commission shall, upon reasonable written notice by the Commission or its staff, to any respondent made, be permitted access to and the right to inspect and copy in said respondent's principal office during the office hour of said respondent, and in the presence of counsel or other representative if said respondent chooses, all books, ledgers, accounts, correspondence, memoranda, and other records and documents, both in detail and in summary form, in the possession of or under the control of said respondent relating to any of the matters contained in this Consent Order and further shall have access to and the right to inspect and copy the records of respondents' independent United States auditors used in reporting upon respondents' reports required in Section VII hereof.

(D) Each respondent shall make available for consultation with the duly authorized representative of the Commission, in the presence of counsel, the individual or individuals who were responsible for the preparation of the report described in Section VII hereof and/or who have knowledge of the substance of the matters contained therein.

(E) No information obtained by the means provided in Section VIII shall be divulged by any representative of the Commission to any person other than a duly authorized representative of the Commission, except as required in the course of legal proceedings to which the Commission is a party for the purpose of securing compliance with this Consent Order or as otherwise required by law, upon reasonable written notice to respondents or their United States counsel.

IX
(Governmental Action)

This Consent Order shall not prohibit compliance with any order or direction of any government, governmental body or agency having jurisdiction over a respondent, provided, however, that such compliance shall not constitute a defense to a violation of this Consent Order except insofar as such a defense is recognized under United States law.

Nothing contained in this Consent Order shall be construed to constitute a waiver of any defense recognized under the laws of the United States, which a respondent may have as a result of compliance with any order or directive of any government, governmental body or agency having jurisdiction over such respondent.

Compliance by any respondent with any order or directive of the Japanese Government issued in implementation of and in accordance with the provisions of the agreement between the Government of the United States of America and the Government of Japan relating to color television receivers as set forth in notes between said governments dated May 20, 1977, shall not be a violation of this Consent Order.

X
(Enforcement)

Each provision of this Consent Order shall be construed independently of any other provision, and compliance with any one provision shall not excuse a violation of any other provision.

Should the Commission have reason to believe that a violation has occurred, a hearing shall be held upon notice. The issues at the hearing shall be: (a) whether a violation has occurred in fact, and (b) if so, a determination of the appropriate remedy. In determining whether there has been a violation, the Commission may consider evidence of any special competitive or economic circumstances presented by any respondent in defense of the alleged violation.

Nothing contained herein shall limit any right of review provided by law.

XI
(Service of Consent Order)

Each respondent is ordered and directed to:

(A) Serve, within thirty (30) days after the effective date of this Consent Order, a conformed copy of this Consent Order upon each of its respective officers, directors, managing agents, agents, and employees who have any responsibility for the marketing, distribution or sale of such respondent's color television receiving sets in the United States or for shipment or export to the United States for resale in the United States;

(B) Serve, within thirty (30) days after the succession of any of the persons referred to in Section XI(A) above, a conformed copy of this Consent Order upon each successor;

(C) Maintain such records as will show the name, title and address of each such officer, director, managing agent, agent and employee upon whom the Consent Order has been served, as described in Section XI(A) and (B) above, together with the date on which service was made; and

(D) The obligations set forth in Section XI(B) and (C) above shall remain in effect for a period of seven (7) years after the effective date of this Consent Order.

XII

(Effective Date)

This Consent Order is to become effective as of the date of its issuance by the Commission. Its provisions shall not apply to color television receiving sets imported and sold by respondents prior to such issuance, except that such sets which are imported and sold in the period from the beginning of the fiscal year beginning in 1977 but prior to the issuance of this Consent Order shall be included for the purpose of compliance with items (3) and (5) of the first paragraph of Section VII above.

Its provisions also shall not apply to color television receiving sets sold by a respondent to a United States customer for importation into the United States prior to such issuance, except such sets which are delivered and paid for in the period from the beginning of the fiscal year beginning in 1977 but prior

to such issuance shall be included for the purpose of compliance with items (3) and (5) of the first paragraph of Section VII, above.

XIII
(Modification)

This Consent Order constitutes a settlement and resolution of Investigation No. 337-TA-23 and the Complaint and the Consolidated Amended Complaint, and does not constitute a determination of any of the factual or legal issues raised in the proceeding or an admission that any respondent has engaged in the conduct prohibited hereby, or an admission that said conduct violates Section 337. Any of the parties to this Consent Order may apply to the Commission at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Consent Order, for the amendment or modification of any of the provisions thereof, or for the enforcement or compliance therewith.

Dated: July 29, 1977

By Order of the Commission:

Kenneth R Mason
Secretary

The above Order is
Consented to:

For Complainants:

By: Edward J. Goldstein
Edward J. Goldstein

CURTIS, MALLET-PREVOST, COLT & MOSLE

By:

Counsel for GTE Sylvania Incorporated
and Philco Consumer Electronics
Corporation

For Respondents:

TANAKA, WALDERS & RITGER

By: _____

Counsel for Hitachi, Ltd.,
Hitachi Kaden Hanbai Kabushiki
Kaisha, and Hitachi Sales
Corporation of America

For Commission Investigative Staff:

By: _____
Commission Investigative Attorney

APPENDIX A

This Appendix A is for reporting purposes only and neither this Appendix A, nor anything set forth in this Consent Order, constitutes a concession or admission by any respondent regarding a standard of cost pursuant to which a finding of predatory pricing may be made.

Total costs attributable to color television receiving sets for reporting purposes shall include (1) all costs directly related to the manufacture, marketing and sale of such color television receiving sets, and (2) an appropriate allocation of all costs incurred by respondents related in part to the manufacture, marketing and sale of color television receiving sets and related in part to a product or business other than color television receiving sets, and (3) an appropriate allocation of all other costs incurred by respondents that are not related specifically to any product or business. All costs and all allocated costs shall be determined on the basis of generally accepted United States accounting principles applied on a consistent basis.* It is expressly provided, however, that nothing contained herein shall require any respondent to change its existing accounting systems and methods. Consistent with the foregoing, costs shall include, but will not be limited to, the following:

---

*The "Special Report" provided for under Section VII of this Consent Order shall be in accordance with generally accepted United States accounting principles. However, it will not constitute non-compliance with this Consent Order if annual reports prepared subsequent to the Special Report are not prepared on a basis consistent with the Special Report.

1. Materials (including integrated circuits, transistors, diodes, printed circuit board, resistors (fixed and potentiometers), capacitors (ceramic, electrolytic, wound film), coils and transformers, cathode ray tube, deflection yoke, cabinet, tuner, metal components, plastic components, speaker, and miscellaneous components).

2. Direct labor (including skilled, semiskilled and unskilled production, technician, testing personnel and an allocation of fringe benefits such as bonuses and incentives, vacations, holidays, health care, pension, paid sick leave and other time off, group insurance, employee welfare, disability/wage continuation, etc.).

3. Factory indirect labor (including semiskilled, skilled labor, technicians, craftsmen, foremen, and an appropriate allocation of fringe benefits such as referred to in Paragraph 2 above).

4. Distribution costs outside the United States (including warehousing, handling, transportation and insurance).

5. Export expenses (including cartage/drayage, shipping charge, and brokerage charge).

6. Shipping costs (including ocean freight, insurance, duties and customs clearance charges).

7. Distribution costs in the United States (including warehousing, handling, freight-in and insurance).

8. Marketing and sales costs in the United States and outside the United States (including freight-out, commissions/

bonuses/sales salaries, incentives, cooperative advertising expense, customer financing, warranty, rebates, sales administration, reserve for bad debts arising from the sale of color television receivers occurring on or after the effective date of this Consent Order, sales returns and allowances and all deductions from revenues not accounted on invoices).

9. Factory overhead (including supplies/expenses, tooling and utility costs, occupancy costs, testing/qc/burn-in, general overhead, plant management, accounting, personnel, quality control supervision, industrial engineering, production engineering, maintenance, purchasing/procurement, inventory control, depreciation, taxes other than income taxes, interest, product design, product engineering, and royalties).

10. General administrative costs (including divisional and corporate-wide expenses such as home office administrative costs, interest, taxes other than income taxes, research and development, product design and product engineering, accounting and auditing and legal incurred in the ordinary course of business, public relations and administrative salaries).

UNITED STATES INTERNATIONAL TRADE COMMISSION

WASHINGTON, D.C.

| | | |
|---|---|---|
| In the Matter of<br>Certain Color Television<br>Receiving Sets | : | Investigation No.<br>337-TA-23 |

CONSENT ORDER

Complainants GTE Sylvania Incorporated and Philco Consumer Electronics Corporation, having filed a Complaint and Consolidated Amended Complaint; and

The United States International Trade Commission ("Commission") having initiated an investigation pursuant to Notices of Investigation; and

The respondents having appeared and denied the material allegations of the Complaint and Consolidated Amended Complaint; and

The Commission having determined it has jurisdiction of the subject matter of this proceeding and the Commission having determined that the Consolidated Amended Complaint states a cause of action under Section 337 of the Tariff Act of 1930, 19 U.S.C. Section 1337 and all acts amendatory thereof and supplementary thereto; and

Before the making of any findings of fact or conclusions of law, and before the hearing or adjudication of any issue of fact or law herein, and the respondents having denied any violation of Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C.

Section 1337 ("Section 337"), or as alleged in the Complaint and Consolidated Amended Complaint, and all of the parties hereto having consented to the entry of this Consent Order;

IT IS HEREBY ORDERED THAT:

I
(Tariff Act of 1930)

The Commission has, and respondents concede that the Commission has, jurisdiction of the subject matter of this investigation and over the respondents signatory hereto for the purposes of issuing and enforcing this Consent Order, and the Protective Order dated September 17, 1976.

II
(Settlement Purposes Only)

This Consent Order is for settlement purposes only and does notconstitute a determination by the Commission or an admission by respondents that the law has been violated as alleged in the Complaint and Consolidated Amended Complaint or Notices of Investigation or otherwise.

III
(Definitions)

As used in this Consent Order:

(A) "Complainants" shall mean GTE Sylvania Incorporated and Philco Consumer Electronics Corporation, and each of them.

(B) "Respondents" shall mean

(1) Sanyo Electric Company, Ltd.,

(2) Sanyo Electric, Inc., and

(3) Sanyo Electric Trading Company, Ltd.

(C) "Person" shall mean an individual, or any non-governmental partnership, firm, association, corporation or other legal or business entity other than the above respondents or their majority owned and/or controlled subsidiaries, their successors or assigns.

(D) "United States" shall mean the fifty States, the District of Columbia and Puerto Rico.

(E) "Color Television Receiving Set" shall mean any color television receiving set manufactured in any country other than the United States for shipment or export to the United States for resale in the United States or for import into the United States for resale in the United States. Color television receiving sets shall include:

(1) A finished color television receiving set which at the time of importation is fully assembled, whether or not tested or packaged, for distribution to the purchaser as a color television receiving set; and

(2) A color television receiving set which at the time of importation is not fully assembled, whether or not in the cabinet, but substantially complete as a finished color television receiving set, as defined in Subsection (1) above, at least to the point where the color picture tube is in place as part of the set; and

(3) A kit which at the time of importation contains all of the components necessary to make it a color television receiving set as defined in Subsections (1) and (2) above.

IV
(Applicability)

The provisions of this Consent Order shall apply to each respondent and to each of its officers, directors, employees, controlled (whether by stock ownership or otherwise) and/or majority owned business entities, successors and assigns, and to each of them, and to all other persons who receive actual notice of this Consent Order by service in accordance with Section XI hereof.

V
(Individual Conduct Prohibited)

A respondent shall not:

(1) Sell any color television receiving set or sets in the United States or for shipment or export to the United States, for resale in the United States at any price in a predatory manner as defined by United States law; or

(2) Give to any person a discount, allowance, credit, rebate, gratuity, financing and credit benefit, or any other monetary inducement to purchase, or other deduction or term which results directly or indirectly in a reduction of the price of a color television receiving set sold in the United States or for shipment or export to the United States, for resale in the United States, for which appropriate descriptive financial records are not maintained by respondent; or

(3) Unlawfully hinder, restrict, limit or prevent directly or through another, any company incorporated in the United States or any subsidiary thereof from buying or selling color television receiving sets from or to any other person in the United States or in Japan in a manner which has an effect on

United States commerce and which is in connection with the importation of color television receiving sets into the United States or the sale of such imported sets in the United States or for shipment or export to the United States for resale in the United States.

VI
(Concerted Conduct Prohibited)

A respondent in connection with the importation of color television receiving sets into the United States or for shipment or export to the United States for resale in the United States shall not unlawfully with any other person or persons, initiate, enter into, adhere to, maintain or further, directly or indirectly, any contract, agreement, combination, conspiracy, understanding, plan or program, for the purpose or with the effect of:

(1) Raising, lowering, fixing, determining, establishing, controlling, maintaining or stabilizing the price, price level, price ceiling, price floor, net price, discount, rebate, allowance, mark-up, profit margin, warranty, or any term or condition of sale at which any other person sells any color television receiving set in the United States or for shipment or export to the United States for resale in the United States; or

(2) Allocating, dividing, rotating, apportioning, assigning, limiting or imposing or attempting to impose any limitations or restrictions respecting (a) the person or persons to whom, or (b) the markets or territories in which, or (c) the volume at which any person may sell color television receiving sets in the United States or for shipment or export to the United States for resale in the United States; or

(3) Hindering, restricting, limiting, or preventing any person from buying or selling color television receiving sets from or to any other person in the United States in a manner which has an effect on United States commerce.

VII
(Reporting)

With respect to each of the four consecutive fiscal years the first of which begins in 1977 and the first six months of the fifth consecutive fiscal year, each respondent shall separately review, determine and report in English under oath to the Commission, on an annual basis, the following: (1) total unit volume of all color television receiving sets sold in the United States or for shipment or export to the United States for resale in the United States, (2) total unit volume in each screen size for such color television receiving sets, (3) aggregated revenues for all such color television receiving sets, (4) aggregated revenues in each screen size for such color television receiving sets, (5) total aggregated costs as defined in Appendix A for such color television receiving sets, (6) total aggregated costs as defined in Appendix A in each screen size for such color television receiving sets, and (7) whether any such color television receiving set has been sold for less than the total variable costs of such set.

The reports provided for herein shall contain a statement of the manner in which such review and determination was conducted and the factors that were considered, including the methods or method of cost allocation. All amounts set forth in such reports shall be expressed in United States dollars, with disclosure

of any exchange rate(s) used to calculate such dollar amounts, including the date(s) on which such rate(s) were controlling.

In addition, respondent shall provide a statement of its independent United States auditor that the independent United States auditor has reviewed respondent's records in conjunction with its annual audit and that the independent United States auditor has reviewed the report required hereby and on the basis of such annual audit does not find any inconsistency between the data in the report and any information which it learned during its annual audit.

Such report, containing the information provided for in items (1) through (7) of the first paragraph of this Section VII, with the oath of the respondent and the statement of the independent United States auditor, shall be delivered to the Commission not later than one hundred and fifty (150) days after the close of each fiscal year, provided, however, that a preliminary report containing the information required under items (1), (2), (3) and (4) of the first paragraph of this Section VII shall be delivered to the Commission not later than ninety (90) days after the close of each fiscal year. Further, a special report containing the information provided for in items (1) through (7) of the first paragraph of this Section VII and covering the period from the effective date of this Consent Order to November 30, 1977, shall be filed with the Commission by March 1, 1978. However, the special report need not include a statement of the independent United States auditor.

All such reports delivered pursuant to the provisions of this Section shall be maintained for a period of five (5) years after the date of such delivery but no later than seven (7) years after the effective date of this Order and thereafter the reports shall be returned to the filing respondents.

All such reports shall be deemed to be proprietary and business confidential and no information contained in or obtained from any such report shall be divulged by any representative of the Commission to any person other than a duly authorized representative of the Commission, except as required in the course of a legal proceeding or as otherwise required by law upon reasonable written notice to the respondents.

In determining whether a respondent is in compliance with the provisions of Sections V and VI hereof, the Commission may consider evidence that the information provided in the reporting requirements of this Section VII is incomplete or inaccurate.

VIII
(Inspection and Compliance)

(A) In determining whether there has been compliance with the prohibitions of this Consent Order, the Commission may consider evidence of any material differences between the revenues and costs reported pursuant to the reporting requirements of Section VII hereof. Further, in determining whether there has been compliance with the provisions of this Consent Order, the Commission may consider evidence of all special economic and competitive circumstances presented by any respondent.

(B) For the purposes of securing compliance with this Consent Order, each respondent shall retain any and all records made and received in the usual and ordinary conduct of its color television receiving set business, whether in detail or in summary form, for a period of three (3) years from the close of the fiscal year to which they pertain, and in summary form for a period of seven (7) years from the close of the fiscal year to which they pertain from which the accuracy of the statements and reports described in Section VII above, may be determined, provided, however, that no such record need be retained for more than two years from the close of the last fiscal year for which a report is required.

(C) For the purpose of determining or securing compliance with this Consent Order, and for no other purposes, and subject to any privilege recognized by federal courts of the United States, during the period from filing the first report required herein up to and including two years from the close of

the last fiscal year for which a report is required, duly authorized representatives of the Commission shall, upon reasonable written notice by the Commission or its staff, to any respondent made, be permitted access to and the right to inspect and copy in said respondent's principal office during the office hour of said respondent, and in the presence of counsel or other representative if said respondent chooses, all books, ledgers, accounts, correspondence, memoranda, and other records and documents, both in detail and in summary form, in the possession of or under the control of said respondent relating to any of the matters contained in this Consent Order and further shall have access to and the right to inspect and copy the records of respondents' independent United States auditors used in reporting upon respondents' reports required in Section VII hereof.

(D) Each respondent shall make available for consultation with the duly authorized representative of the Commission, in the presence of counsel, the individual or individuals who were responsible for the preparation of the report described in Section VII hereof and/or who have knowledge of the substance of the matters contained therein.

(E) No information obtained by the means provided in Section VIII shall be divulged by any representative of the Commission to any person other than a duly authorized representative of the Commission, except as required in the course of legal proceedings to which the Commission is a party for the purpose of securing compliance with this Consent Order or as otherwise required by law, upon reasonable written notice to respondents or their United States counsel.

IX
(Governmental Action)

This Consent Order shall not prohibit compliance with any order or direction of any government, governmental body or agency having jurisdiction over a respondent, provided, however, that such compliance shall not constitute a defense to a violation of this Consent Order except insofar as such a defense is recognized under United States law.

Nothing contained in this Consent Order shall be construed to constitute a waiver of any defense recognized under the laws of the United States, which a respondent may have as a result of compliance with any order or directive of any government, governmental body or agency having jurisdiction over such respondent.

Compliance by any respondent with any order or directive of the Japanese Government issued in implementation of and in accordance with the provisions of the agreement between the Government of the United States of America and the Government of Japan relating to color television receivers as set forth in notes between said governments dated May 20, 1977, shall not be a violation of this Consent Order.

X
(Enforcement)

Each provision of this Consent Order shall be construed independently of any other provision, and compliance with any one provision shall not excuse a violation of any other provision.

Should the Commission have reason to believe that a violation has occurred, a hearing shall be held upon notice. The issues at the hearing shall be: (a) whether a violation has occurred in fact, and (b) if so, a determination of the appropriate remedy. In determining whether there has been a violation, the Commission may consider evidence of any special competitive or economic circumstances presented by any respondent in defense of the alleged violation.

Nothing contained herein shall limit any right of review provided by law.

XI
(Service of Consent Order)

Each respondent is ordered and directed to:

(A) Serve, within thirty (30) days after the effective date of this Consent Order, a conformed copy of this Consent Order upon each of its respective officers, directors, managing agents, agents, and employees who have any responsibility for the marketing, distribution or sale of such respondent's color television receiving sets in the United States or for shipment or export to the United States for resale in the United States;

(B) Serve, within thirty (30) days after the succession of any of the persons referred to in Section XI(A) above, a conformed copy of this Consent Order upon each successor;

(C) Maintain such records as will show the name, title and address of each such officer, director, managing agent, agent and employee upon whom the Consent Order has been served, as described in Section XI(A) and (B) above, together with the date on which service was made; and

(D) The obligations set forth in Section XI(B) and (C) above shall remain in effect for a period of seven (7) years after the effective date of this Consent Order.

XII
(Effective Date)

This Consent Order is to become effective as of the date of its issuance by the Commission. Its provisions shall not apply to color television receiving sets imported and sold by respondents prior to such issuance, except that such sets which are imported and sold in the period from the beginning of the fiscal year beginning in 1977 but prior to the issuance of this Consent Order shall be included for the purpose of compliance with items (3) and (5) of the first paragraph of Section VII above.

Its provisions also shall not apply to color television receiving sets sold by a respondent to a United States customer for importation into the United States prior to such issuance, except such sets which are delivered and paid for in the period from the beginning of the fiscal year beginning in 1977 but prior

to such issuance shall be included for the purpose of compliance with items (3) and (5) of the first paragraph of Section VII, above.

XIII
(Modification)

This Consent Order constitutes a settlement and resolution of Investigation No. 337-TA-23 and the Complaint and the Consolidated Amended Complaint, and does not constitute a determination of any of the factual or legal issues raised in the proceeding or an admission that any respondent has engaged in the conduct prohibited hereby, or an admission that said conduct violates Section 337. Any of the parties to this Consent Order may apply to the Commission at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Consent Order, for the amendment or modification of any of the provisions thereof, or for the enforcement or compliance therewith.

Dated: July 29, 1977

By Order of the Commission:

Kenneth R. Mason
Secretary

The above Order is
Consented to:

For Complainants:

By: Edward J. Goldstein
Edward J. Goldstein

CURTIS, MALLET-PREVOST, COLT & MOSLE

By:

Counsel for GTE Sylvania Incorporated
and Philco Consumer Electronics
Corporation

For Respondents:

SHARRETTS, PALEY, CARTER & BLAUVELT

By: _____

Counsel for Sanyo Electric Company, Ltd., Sanyo Electric, Inc. and Sanyo Electric Trading Company, Ltd.

For Commission Investigative Staff:

By: _____
Commission Investigative Attorney

## APPENDIX A

This Appendix A is for reporting purposes only and neither this Appendix A, nor anything set forth in this Consent Order, constitutes a concession or admission by any respondent regarding a standard of cost pursuant to which a finding of predatory pricing may be made.

Total costs attributable to color television receiving sets for reporting purposes shall include (1) all costs directly related to the manufacture, marketing and sale of such color television receiving sets, and (2) an appropriate allocation of all costs incurred by respondents related in part to the manufacture, marketing and sale of color television receiving sets and related in part to a product or business other than color television receiving sets, and (3) an appropriate allocation of all other costs incurred by respondents that are not related specifically to any product or business. All costs and all allocated costs shall be determined on the basis of generally accepted United States accounting principles applied on a consistent basis.* It is expressly provided, however, that nothing contained herein shall require any respondent to change its existing accounting systems and methods. Consistent with the foregoing, costs shall include, but will not be limited to, the following:

---

*The "Special Report" provided for under Section VII of this Consent Order shall be in accordance with generally accepted United States accounting principles. However, it will not constitute non-compliance with this Consent Order if annual reports prepared subsequent to the Special Report are not prepared on a basis consistent with the Special Report.

1. Materials (including integrated circuits, transistors, diodes, printed circuit board, resistors (fixed and potentiometers), capacitors (ceramic, electrolytic, wound film), coils and transformers, cathode ray tube, deflection yoke, cabinet, tuner, metal components, plastic components, speaker, and miscellaneous components).

2. Direct labor (including skilled, semiskilled and unskilled production, technician, testing personnel and an allocation of fringe benefits such as bonuses and incentives, vacations, holidays, health care, pension, paid sick leave and other time off, group insurance, employee welfare, disability/wage continuation, etc.).

3. Factory indirect labor (including semiskilled, skilled labor, technicians, craftsmen, foremen, and an appropriate allocation of fringe benefits such as referred to in Paragraph 2 above).

4. Distribution costs outside the United States (including warehousing, handling, transportation and insurance).

5. Export expenses (including cartage/drayage, shipping charge, and brokerage charge).

6. Shipping costs (including ocean freight, insurance, duties and customs clearance charges).

7. Distribution costs in the United States (including warehousing, handling, freight-in and insurance).

8. Marketing and sales costs in the United States and outside the United States (including freight-out, commissions/

bonuses/sales salaries, incentives, cooperative advertising expense, customer financing, warranty, rebates, sales administration, reserve for bad debts arising from the sale of color television receivers occurring on or after the effective date of this Consent Order, sales returns and allowances and all deductions from revenues not accounted on invoices).

9. Factory overhead (including supplies/expenses, tooling and utility costs, occupancy costs, testing/qc/burn-in, general overhead, plant management, accounting, personnel, quality control supervision, industrial engineering, production engineering, maintenance, purchasing/procurement, inventory control, depreciation, taxes other than income taxes, interest, product design, product engineering, and royalties).

10. General administrative costs (including divisional and corporate-wide expenses such as home office administrative costs, interest, taxes other than income taxes, research and development, product design and product engineering, accounting and auditing and legal incurred in the ordinary course of business, public relations and administrative salaries).

UNITED STATES INTERNATIONAL TRADE COMMISSION

WASHINGTON, D.C.

| | | |
|---|---|---|
| In the Matter of<br>Certain Color Television<br>Receiving Sets | : | Investigation No.<br>337-TA-23 |

CONSENT ORDER

Complainants GTE Sylvania Incorporated and Philco Consumer Electronics Corporation, having filed a Complaint and Consolidated Amended Complaint; and

The United States International Trade Commission ("Commission") having initiated an investigation pursuant to Notices of Investigation; and

The respondents having appeared and denied the material allegations of the Complaint and Consolidated Amended Complaint; and

The Commission having determined it has jurisdiction of the subject matter of this proceeding and the Commission having determined that the Consolidated Amended Complaint states a cause of action under Section 337 of the Tariff Act of 1930, 19 U.S.C. Section 1337 and all acts amendatory thereof and supplementary thereto; and

Before the making of any findings of fact or conclusions of law, and before the hearing or adjudication of any issue of fact or law herein, and the respondents having denied any violation of Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C.

Section 1337 ("Section 337"), or as alleged in the Complaint and Consolidated Amended Complaint, and all of the parties hereto having consented to the entry of this Consent Order;

IT IS HEREBY ORDERED THAT:

I
(Tariff Act of 1930)

The Commission has, and respondents concede that the Commission has, jurisdiction of the subject matter of this investigation and over the respondents signatory hereto for the purposes of issuing and enforcing this Consent Order, and the Protective Order dated September 17, 1976.

II
(Settlement Purposes Only)

This Consent Order is for settlement purposes only and does notconstitute a determination by the Commission or an admission by respondents that the law has been violated as alleged in the Complaint and Consolidated Amended Complaint or Notices of Investigation or otherwise.

III
(Definitions)

As used in this Consent Order:

(A) "Complainants" shall mean GTE Sylvania Incorporated and Philco Consumer Electronics Corporation, and each of them.

(B) "Respondents" shall mean

(1) Tokyo Shibaura Electric Company, Ltd., and

(2) Toshiba America, Inc.

(C) "Person" shall mean an individual, or any non-governmental partnership, firm, association, corporation or other legal or business entity other than the above respondents or their majority owned and/or controlled subsidiaries, their successors or assigns.

(D) "United States" shall mean the fifty States, the District of Columbia and Puerto Rico.

(E) "Color Television Receiving Set" shall mean any color television receiving set manufactured in any country other than the United States for shipment or export to the United States for resale in the United States or for import into the United States for resale in the United States. Color television receiving sets shall include:

(1) A finished color television receiving set which at the time of importation is fully assembled, whether or not tested or packaged, for distribution to the purchaser as a color television receiving set; and

(2) A color television receiving set which at the time of importation is not fully assembled, whether or not in the cabinet, but substantially complete as a finished color television receiving set, as defined in Subsection (1) above, at least to the point where the color picture tube is in place as part of the set; and

(3) A kit which at the time of importation contains all of the components necessary to make it a color television receiving set as defined in Subsections (1) and (2) above.

IV
(Applicability)

The provisions of this Consent Order shall apply to each respondent and to each of its officers, directors, employees, controlled (whether by stock ownership or otherwise) and/or majority owned business entities, successors and assigns, and to each of them, and to all other persons who receive actual notice of this Consent Order by service in accordance with Section XI hereof.

V
(Individual Conduct Prohibited)

A respondent shall not:

(1) Sell any color television receiving set or sets in the United States or for shipment or export to the United States, for resale in the United States at any price in a predatory manner as defined by United States law; or

(2) Give to any person a discount, allowance, credit, rebate, gratuity, financing and credit benefit, or any other monetary inducement to purchase, or other deduction or term which results directly or indirectly in a reduction of the price of a color television receiving set sold in the United States or for shipment or export to the United States, for resale in the United States, for which appropriate descriptive financial records are not maintained by respondent; or

(3) Unlawfully hinder, restrict, limit or prevent directly or through another, any company incorporated in the United States or any subsidiary thereof from buying or selling color television receiving sets from or to any other person in the United States or in Japan in a manner which has an effect on

United States commerce and which is in connection with the importation of color television receiving sets into the United States or the sale of such imported sets in the United States or for shipment or export to the United States for resale in the United States.

VI
(Concerted Conduct Prohibited)

A respondent in connection with the importation of color television receiving sets into the United States or for shipment or export to the United States for resale in the United States shall not unlawfully with any other person or persons, initiate, enter into, adhere to, maintain or further, directly or indirectly, any contract, agreement, combination, conspiracy, understanding, plan or program, for the purpose or with the effect of:

(1) Raising, lowering, fixing, determining, establishing, controlling, maintaining or stabilizing the price, price level, price ceiling, price floor, net price, discount, rebate, allowance, mark-up, profit margin, warranty, or any term or condition of sale at which any other person sells any color television receiving set in the United States or for shipment or export to the United States for resale in the United States; or

(2) Allocating, dividing, rotating, apportioning, assigning, limiting or imposing or attempting to impose any limitations or restrictions respecting (a) the person or persons to whom, or (b) the markets or territories in which, or (c) the volume at which any person may sell color television receiving sets in the United States or for shipment or export to the United States for resale in the United States; or

(3) Hindering, restricting, limiting, or preventing any person from buying or selling color television receiving sets from or to any other person in the United States in a manner which has an effect on United States commerce.

VII
(Reporting)

With respect to each of the five consecutive fiscal years the first of which begins in 1977, each respondent shall separately reveiw, determine and report in English under oath to the Commission, on an annual basis, the following: (1) total unit volume of all color television receiving sets sold in the United States or for shipment or export to the United States for resale in the United States, (2) total unit volume in each screen size for such color television receiving sets, (3) aggregated revenues for all such color television receiving sets, (4) aggregated revenues in each screen size for such color television receiving sets, (5) total aggregated costs as defined in Appendix A for such color television receiving sets, (6) total aggregated costs as defined in Appendix A in each screen size for such color television receiving sets, and (7) whether any such color television receiving set has been sold for less than the total variable costs of such set.

The reports provided for herein shall contain a statement of the manner in which such review and determination was conducted and the factors that were considered, including the methods or method of cost allocation. All amounts set forth in such reports shall be expressed in United States dollars, with disclosure

of any exchange rate(s) used to calculate such dollar amounts, including the date(s) on which such rate(s) were controlling.

In addition, respondent shall provide a statement of its independent United States auditor that the independent United States auditor has reviewed respondent's records in conjunction with its annual audit and that the independent United States auditor has reviewed the report required hereby and on the basis of such annual audit does not find any inconsistency between the data in the report and any information which it learned during its annual audit.

Such report, containing the information provided for in items (1) through (7) of the first paragraph of this Section VII, with the oath of the respondent and the statement of the independent United States auditor, shall be delivered to the Commission not later than one hundred and fifty (150) days after the close of each fiscal year, provided, however, that a preliminary report containing the information required under items (1), (2), (3) and (4) of the first paragraph of this Section VII shall be delivered to the Commission not later than ninety (90) days after the close of each fiscal year. Further, a special report containing the information provided for in items (1) through (7) of the first paragraph of this Section VII and covering the period from the effective date of this Consent Order to September 30, 1977, shall be filed with the Commission by December 31, 1977. However, the special report need not include a statement of the independent United States auditor.

All such reports delivered pursuant to the provisions of this Section shall be maintained for a period of five (5) years after the date of such delivery but no later than seven (7) years after the effective date of this Order and thereafter the reports shall be returned to the filing respondents.

All such reports shall be deemed to be proprietary and business confidential and no information contained in or obtained from any such report shall be divulged by any representative of the Commission to any person other than a duly authorized representative of the Commission, except as required in the course of a legal proceeding or as otherwise required by law upon reasonable written notice to the respondents.

In determining whether a respondent is in compliance with the provisions of Sections V and VI hereof, the Commission may consider evidence that the information provided in the reporting requirements of this Section VII is incomplete or inaccurate.

VIII
(Inspection and Compliance)

(A) In determining whether there has been compliance with the prohibitions of this Consent Order, the Commission may consider evidence of any material differences between the revenues and costs reported pursuant to the reporting requirements of Section VII hereof. Further, in determining whether there has been compliance with the provisions of this Consent Order, the Commission may consider evidence of all special economic and competitive circumstances presented by any respondent.

(B) For the purposes of securing compliance with this Consent Order, each respondent shall retain any and all records made and received in the usual and ordinary conduct of its color television receiving set business, whether in detail or in summary form, for a period of three (3) years from the close of the fiscal year to which they pertain, and in summary form for a period of seven (7) years from the close of the fiscal year to which they pertain from which the accuracy of the statements and reports described in Section VII above, may be determined, provided, however, that no such record need be retained for more than two years from the close of the last fiscal year for which a report is required.

(C) For the purpose of determining or securing compliance with this Consent Order, and for no other purposes, and subject to any privilege recognized by federal courts of the United States, during the period from filing the first report required herein up to and including two years from the close of

the last fiscal year for which a report is required, duly authorized representatives of the Commission shall, upon reasonable written notice by the Commission or its staff, to any respondent made, be permitted access to and the right to inspect and copy in said respondent's principal office during the office hour of said respondent, and in the presence of counsel or other representative if said respondent chooses, all books, ledgers, accounts, correspondence, memoranda, and other records and documents, both in detail and in summary form, in the possession of or under the control of said respondent relating to any of the matters contained in this Consent Order and further shall have access to and the right to inspect and copy the records of respondents' independent United States auditors used in reporting upon respondents' reports required in Section VII hereof.

(D) Each respondent shall make available for consultation with the duly authorized representative of the Commission, in the presence of counsel, the individual or individuals who were responsible for the preparation of the report described in Section VII hereof and/or who have knowledge of the substance of the matters contained therein.

(E) No information obtained by the means provided in Section VIII shall be divulged by any representative of the Commission to any person other than a duly authorized representative of the Commission, except as required in the course of legal proceedings to which the Commission is a party for the purpose of securing compliance with this Consent Order or as otherwise required by law, upon reasonable written notice to respondents or their United States counsel.

IX
(Governmental Action)

This Consent Order shall not prohibit compliance with any order or direction of any government, governmental body or agency having jurisdiction over a respondent, provided, however, that such compliance shall not constitute a defense to a violation of this Consent Order except insofar as such a defense is recognized under United States law.

Nothing contained in this Consent Order shall be construed to constitute a waiver of any defense recognized under the laws of the United States, which a respondent may have as a result of compliance with any order or directive of any government, governmental body or agency having jurisdiction over such respondent.

Compliance by any respondent with any order or directive of the Japanese Government issued in implementation of and in accordance with the provisions of the agreement between the Government of the United States of America and the Government of Japan relating to color television receivers as set forth in notes between said governments dated May 20, 1977, shall not be a violation of this Consent Order.

X
(Enforcement)

Each provision of this Consent Order shall be construed independently of any other provision, and compliance with any one provision shall not excuse a violation of any other provision.

Should the Commission have reason to believe that a violation has occurred, a hearing shall be held upon notice. The issues at the hearing shall be: (a) whether a violation has occurred in fact, and (b) if so, a determination of the appropriate remedy. In determining whether there has been a violation, the Commission may consider evidence of any special competitive or economic circumstances presented by any respondent in defense of the alleged violation.

Nothing contained herein shall limit any right of review provided by law.

XI
(Service of Consent Order)

Each respondent is ordered and directed to:

(A) Serve, within thirty (30) days after the effective date of this Consent Order, a conformed copy of this Consent Order upon each of its respective officers, directors, managing agents, agents, and employees who have any responsibility for the marketing, distribution or sale of such respondent's color television receiving sets in the United States or for shipment or export to the United States for resale in the United States;

(B) Serve, within thirty (30) days after the succession of any of the persons referred to in Section XI(A) above, a conformed copy of this Consent Order upon each successor;

(C) Maintain such records as will show the name, title and address of each such officer, director, managing agent, agent and employee upon whom the Consent Order has been served, as described in Section XI(A) and (B) above, together with the date on which service was made; and

(D) The obligations set forth in Section XI(B) and (C) above shall remain in effect for a period of seven (7) years after the effective date of this Consent Order.

XII
(Effective Date)

This Consent Order is to become effective as of the date of its issuance by the Commission. Its provisions shall not apply to color television receiving sets imported and sold by respondents prior to such issuance, except that such sets which are imported and sold in the period from the beginning of the fiscal year beginning in 1977 but prior to the issuance of this Consent Order shall be included for the purpose of compliance with items (3) and (5) of the first paragraph of Section VII above.

Its provisions also shall not apply to color television receiving sets sold by a respondent to a United States customer for importation into the United States prior to such issuance, except such sets which are delivered and paid for in the period from the beginning of the fiscal year beginning in 1977 but prior

to such issuance shall be included for the purpose of compliance with items (3) and (5) of the first paragraph of Section VII, above.

XIII
(Modification)

This Consent Order constitutes a settlement and resolution of Investigation No. 337-TA-23 and the Complaint and the Consolidated Amended Complaint, and does not constitute a determination of any of the factual or legal issues raised in the proceeding or an admission that any respondent has engaged in the conduct prohibited hereby, or an admission that said conduct violates Section 337. Any of the parties to this Consent Order may apply to the Commission at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Consent Order, for the amendment or modification of any of the provisions thereof, or for the enforcement or compliance therewith.

Dated: July 29, 1977

By Order of the Commission:

Kenneth R. Mason
Secretary

The above Order is
Consented to:

For Complainants:

By: Edward J. Goldstein
Edward J. Goldstein

CURTIS, MALLET-PREVOST, COLT & MOSLE

By:

Counsel for GTE Sylvania Incorporated
and Philco Consumer Electronics
Corporation

For Respondents:

MUDGE ROSE GUTHRIE & ALEXANDER

By: _____

Counsel for Tokyo Shibaura Electric Company, Ltd. and Toshiba America, Inc.

For Commission Investigative Staff:

By: _____
Commission Investigative Attorney

# APPENDIX A

This Appendix A is for reporting purposes only and neither this Appendix A, nor anything set forth in this Consent Order, constitutes a concession or admission by any respondent regarding a standard of cost pursuant to which a finding of predatory pricing may be made.

Total costs attributable to color television receiving sets for reporting purposes shall include (1) all costs directly related to the manufacture, marketing and sale of such color television receiving sets, and (2) an appropriate allocation of all costs incurred by respondents related in part to the manufacture, marketing and sale of color television receiving sets and related in part to a product or business other than color television receiving sets, and (3) an appropriate allocation of all other costs incurred by respondents that are not related specifically to any product or business. All costs and all allocated costs shall be determined on the basis of generally accepted United States accounting principles applied on a consistent basis.* It is expressly provided, however, that nothing contained herein shall require any respondent to change its existing accounting systems and methods. Consistent with the foregoing, costs shall include, but will not be limited to, the following:

---

*The "Special Report" provided for under Section VII of this Consent Order shall be in accordance with generally accepted United States accounting principles. However, it will not constitute non-compliance with this Consent Order if annual reports prepared subsequent to the Special Report are not prepared on a basis consistent with the Special Report.

1. Materials (including integrated circuits, transistors, diodes, printed circuit board, resistors (fixed and potentiometers), capacitors (ceramic, electrolytic, wound film), coils and transformers, cathode ray tube, deflection yoke, cabinet, tuner, metal components, plastic components, speaker, and miscellaneous components).

2. Direct labor (including skilled, semiskilled and unskilled production, technician, testing personnel and an allocation of fringe benefits such as bonuses and incentives, vacations, holidays, health care, pension, paid sick leave and other time off, group insurance, employee welfare, disability/wage continuation, etc.).

3. Factory indirect labor (including semiskilled, skilled labor, technicians, craftsmen, foremen, and an appropriate allocation of fringe benefits such as referred to in Paragraph 2 above).

4. Distribution costs outside the United States (including warehousing, handling, transportation and insurance).

5. Export expenses (including cartage/drayage, shipping charge, and brokerage charge).

6. Shipping costs (including ocean freight, insurance, duties and customs clearance charges).

7. Distribution costs in the United States (including warehousing, handling, freight-in and insurance).

8. Marketing and sales costs in the United States and outside the United States (including freight-out, commissions/

bonuses/sales salaries, incentives, cooperative advertising expense, customer financing, warranty, rebates, sales administration, reserve for bad debts arising from the sale of color television receivers occurring on or after the effective date of this Consent Order, sales returns and allowances and all deductions from revenues not accounted on invoices).

9. Factory overhead (including supplies/expenses, tooling and utility costs, occupancy costs, testing/qc/burn-in, general overhead, plant management, accounting, personnel, quality control supervision, industrial engineering, production engineering, maintenance, purchasing/procurement, inventory control, depreciation, taxes other than income taxes, interest, product design, product engineering, and royalties).

10. General administrative costs (including divisional and corporate-wide expenses such as home office administrative costs, interest, taxes other than income taxes, research and development, product design and product engineering, accounting and auditing and legal incurred in the ordinary course of business, public relations and administrative salaries).

UNITED STATES INTERNATIONAL TRADE COMMISSION

Washington, D. C.

| | | |
|---|---|---|
| In the Matter of | : | |
| | : | Investigation No. 337-TA-23 |
| CERTAIN COLOR TELEVISION RECEIVING SETS | : | |

CONSENT ORDER

Complainants GTE Sylvania Incorporated and Philco Consumer Electronics Corporation, having filed a Complaint and Consolidated Amended Complaint; and

The United States International Trade Commission ("Commission") having initiated an investigation pursuant to Notices of Investigation; and

The respondent having appeared and denied the material allegations of the Complaint and Consolidated Amended Complaint; and

The Commission having determined it has jurisdiction of the subject matter of this proceeding and the Commission having determined that the Consolidated Amended Complaint states a cause of action under Section 337 of the Tariff Act of 1930, 19 U.S.C. Section 1337 and all acts amendatory thereof and supplementary thereto; and

Before the making of any findings of fact or conclusions of law, and before the hearing or adjudication of any issue of fact or law herein, and the respondent having denied any violation of Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. Section 1337 ("Section 337"), or as alleged in the Complaint and Consolidated Amended Complaint, and all of the parties hereto having consented to the entry of this Consent Order:

IT IS HEREBY ORDERED THAT:

I

(Tariff Act of 1930)

The Commission has, and respondent concedes that the Commission has, jurisdiction of the subject matter of this investigation and over the respondent who is signatory hereto for the purposes of issuing and enforcing this Consent Order, and the Protective Order dated September 17, 1976.

II

(Settlement Purposes Only)

This Consent Order is for settlement purposes only and does not constitute a determination by the Commission or an admission by respondent that the law had been violated as alleged in the Complaint and Consolidated Amended Complaint or Notices of Investigation or otherwise.

III

(Settlement)

It appears that MIC has never engaged in the business of manufacturing color television receiving sets and has not on a continuous and systematic basis engaged in the importation, distribution and/or sale of color television receiving sets in the United States since October 1, 1974. If MIC shall at any time enter into the business of importation and/or distribution, and/or sale of imported color television receiving sets in the United States on a continuous and systematic basis, MIC shall become subject to all of the terms and conditions of the Consent Order entered into by the other respondents to the Complaint and Consolidated Amended Complaint. The Consent Order to which MIC would be subject in such circumstances is attached hereto as Exhibit A.

Dated: July 29, 1977

By Order of the Commission

Kenneth R. Mason
Secretary

The above Order is Consented to:

For Complainants:

By Edward J. Goldstein RDP
Edward J. Goldstein

CURTIS, MALLET-PREVOST, COLT & MOSLE

By _____

Counsel for GTE Sylvania Incorporated
and Philco Consumer Electronics
Corporation

For Respondent:

REID & PRIEST

By _____
Charles F. Schirmeister

Counsel for Mitsubishi International
Corporation

For Commission Investigative Staff:

By _____
Commission Investigative Attorney

EXHIBIT A

UNITED STATES INTERNATIONAL TRADE COMMISSION

WASHINGTON, D.C.

| | | |
|---|---|---|
| In the Matter of<br>Certain Color Television<br>Receiving Sets | : | Investigation No.<br>337-TA-23 |

## CONSENT ORDER

Complainants GTE Sylvania Incorporated and Philco Consumer Electronics Corporation, having filed a Complaint and Consolidated Amended Complaint; and

The United States International Trade Commission ("Commission") having initiated an investigation pursuant to Notices of Investigation; and

The respondent having appeared and denied the material allegations of the Complaint and Consolidated Amended Complaint; and

The Commission having determined it has jurisdiction of the subject matter of this proceeding and the Commission having determined that the Consolidated Amended Complaint states a cause of action under Section 337 of the Tariff Act of 1930, 19 U.S.C. Section 1337 and all acts amendatory thereof and supplementary thereto; and

Before the making of any findings of fact or conclusions of law, and before the hearing or adjudication of any issue of fact or law herein, and the respondent having denied any violation of Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C.

Section 1337 ("Section 337"), or as alleged in the Complaint and Consolidated Amended Complaint, and all of the parties hereto having consented to the entry of this Consent Order;

IT IS HEREBY ORDERED THAT:

I
(Tariff Act of 1930)

The Commission has, and respondent concedes that the Commission has, jurisdiction of the subject matter of this investigation and over the respondent signatory hereto for the purposes of issuing and enforcing this Consent Order, and the Protective Order dated September 17, 1976.

II
(Settlement Purposes Only)

This Consent Order is for settlement purposes only and does notconstitute a determination by the Commission or an admission by respondent that the law has been violated as alleged in the Complaint and Consolidated Amended Complaint or Notices of Investigation or otherwise.

III
(Definitions)

As used in this Consent Order:

(A) "Complainants" shall mean GTE Sylvania Incorporated and Philco Consumer Electronics Corporation, and each of them.

(B) "Respondent " shall mean

(1) Mitsubishi International Corporation.

(C) "Person" shall mean an individual, or any non-governmental partnership, firm, association, corporation or other legal or business entity other than the above respondent or its majority owned and/or controlled subsidiaries, their successors or assigns.

(D) "United States" shall mean the fifty States, the District of Columbia and Puerto Rico.

(E) "Color Television Receiving Set" shall mean any color television receiving set manufactured in any country other than the United States for shipment or export to the United States for resale in the United States or for import into the United States for resale in the United States. Color television receiving sets shall include:

(1) A finished color television receiving set which at the time of importation is fully assembled, whether or not tested or packaged, for distribution to the purchaser as a color television receiving set; and

(2) A color television receiving set which at the time of importation is not fully assembled, whether or not in the cabinet, but substantially complete as a finished color television receiving set, as defined in Subsection (1) above, at least to the point where the color picture tube is in place as part of the set; and

(3) A kit which at the time of importation contains all of the components necessary to make it a color television receiving set as defined in Subsections (1) and (2) above.

IV
(Applicability)

The provisions of this Consent Order shall apply to the respondent and to its officers, directors, employees, controlled (whether by stock ownership or otherwise) and/or majority owned business entities, successors and assigns, and to each of them, and to all other persons who receive actual notice of this Consent Order by service in accordance with Section XI hereof.

V
(Individual Conduct Prohibited)

The respondent shall not:

(1) Sell any color television receiving set or sets in the United States or for shipment or export to the United States, for resale in the United States at any price in a predatory manner as defined by United States law; or

(2) Give to any person a discount, allowance, credit, rebate, gratuity, financing and credit benefit, or any other monetary inducement to purchase, or other deduction or term which results directly or indirectly in a reduction of the price of a color television receiving set sold in the United States or for shipment or export to the United States, for resale in the United States, for which appropriate descriptive financial records are not maintained by respondent; or

(3) Unlawfully hinder, restrict, limit or prevent directly or through another, any company incorporated in the United States or any subsidiary thereof from buying or selling color television receiving sets from or to any other person in the United States or in Japan in a manner which has an effect on

United States commerce and which is in connection with the importation of color television receiving sets into the United States or the sale of such imported sets in the United States or for shipment or export to the United States for resale in the United States.

VI
(Concerted Conduct Prohibited)

The respondent in connection with the importation of color television receiving sets into the United States or for shipment or export to the United States for resale in the United States shall not unlawfully with any other person or persons, initiate, enter into, adhere to, maintain or further, directly or indirectly, any contract, agreement, combination, conspiracy, understanding, plan or program, for the purpose or with the effect of:

(1) Raising, lowering, fixing, determining, establishing, controlling, maintaining or stabilizing the price, price level, price ceiling, price floor, net price, discount, rebate, allowance, mark-up, profit margin, warranty, or any term or condition of sale at which any other person sells any color television receiving set in the United States or for shipment or export to the United States for resale in the United States; or

(2) Allocating, dividing, rotating, apportioning, assigning, limiting or imposing or attempting to impose any limitations or restrictions respecting (a) the person or persons to whom, or (b) the markets or territories in which, or (c) the volume at which any person may sell color television receiving sets in the United States or for shipment or export to the United States for resale in the United States; or

(3) Hindering, restricting, limiting, or preventing any person from buying or selling color television receiving sets from or to any other person in the United States in a manner which has an effect on United States commerce.

VII
(Reporting)

With respect to each of the five consecutive fiscal years the first of which begins in 1977, the respondent shall determine and report in English under oath to the Commission, on an annual basis, the following: (1) total unit volume of all color television receiving sets sold in the United States or for shipment or export to the United States for resale in the United States, (2) total unit volume in each screen size for such color television receiving sets, (3) aggregated revenues for all such color television receiving sets, (4) aggregated revenues in each screen size for such color television receiving sets, (5) total aggregated costs as defined in Appendix A for such color television receiving sets, (6) total aggregated costs as defined in Appendix A in each screen size for such color television receiving sets, and (7) whether any such color television receiving set has been sold for less than the total variable costs of such set.

The reports provided for herein shall contain a statement of the manner in which such review and determination was conducted and the factors that were considered, including the methods or method of cost allocation. All amounts set forth in such reports shall be expressed in United States dollars, with disclosure

of any exchange rate(s) used to calculate such dollar amounts, including the date(s) on which such rate(s) were controlling.

In addition, respondent shall provide a statement of its independent United States auditor that the independent United States auditor has reviewed respondent's records in conjunction with its annual audit and that the independent United States auditor has reviewed the report required hereby and on the basis of such annual audit does not find any inconsistency between the data in the report and any information which it learned during its annual audit.

Such report, containing the information provided for in items (1) through (7) of the first paragraph of this Section VII, with the oath of the respondent and the statement of the independent United States auditor, shall be delivered to the Commission not later than one hundred and fifty (150) days after the close of each fiscal year, provided, however, that a preliminary report containing the information required under items (1), (2), (3) and (4) of the first paragraph of this Section VII shall be delivered to the Commission not later than ninety (90) days after the close of each fiscal year. Further, a special report containing the information provided for in items (1) through (7) of the first paragraph of this Section VII and covering the period from the effective date of this Consent Order to September 30, 1977, shall be filed with the Commission by December 31, 1977. However, the special report need not include a statement of the independent United States auditor.

All such reports delivered pursuant to the provisions of this Section shall be maintained for a period of five (5) years after the date of such delivery but no later than seven (7) years

All such reports shall be deemed to be proprietary and business confidential and no information contained in or obtained from any such report shall be divulged by any representative of the Commission to any person other than a duly authorized representative of the Commission, except as required in the course of a legal proceeding or as otherwise required by law upon reasonable written notice to the respondent.

In determining whether the respondent is in compliance with the provisions of Sections V and VI hereof, the Commission may consider evidence that the information provided in the reporting requirements of this Section VII is incomplete or inaccurate.

VIII

(Inspection and Compliance)

(A) In determining whether there has been compliance with the prohibitions of this Consent Order, the Commission may consider evidence of any material differences between the revenues and costs reported pursuant to the reporting requirements of Section VII hereof. Further, in determining whether there has been compliance with the provisions of this Consent Order, the Commission may consider evidence of all special economic and competitive circumstances presented by the respondent.

(B) For the purposes of securing compliance with this Consent Order, the respondent shall retain any and all records made and received in the usual and ordinary conduct of its color television receiving set business, whether in detail or in summary form, for a period of three (3) years from the close of the fiscal year to which they pertain, and in summary form for a period of seven (7) years from the close of the fiscal year to which they pertain from which the accuracy of the statements and reports described in Section VII above, may be determined, provided, however, that no such record need be retained for more than two years from the close of the last fiscal year for which a report is required.

(C) For the purpose of determining or securing compliance with this Consent Order, and for no other purposes, and subject to any privilege recognized by federal courts of the United States, during the period from filing the first report required herein up to and including two years from the close of

the last fiscal year for which a report is required, duly authorized representatives of the Commission shall, upon reasonable written notice by the Commission or its staff, to any respondent made, be permitted access to and the right to inspect and copy in said respondent's principal office during the office hour of said respondent, and in the presence of counsel or other representative if said respondent chooses, all books, ledgers, accounts, correspondence, memoranda, and other records and documents, both in detail and in summary form, in the possession of or under the control of said respondent relating to any of the matters contained in this Consent Order and further shall have access to and the right to inspect and copy the records of respondents' independent United States auditors used in reporting upon respondents' reports required in Section VII hereof.

(D) Each respondent shall make available for consultation with the duly authorized representative of the Commission, in the presence of counsel, the individual or individuals who were responsible for the preparation of the report described in Section VII hereof and/or who have knowledge of the substance of the matters contained therein.

(E) No information obtained by the means provided in Section VIII shall be divulged by any representative of the Commission to any person other than a duly authorized representative of the Commission, except as required in the course of legal proceedings to which the Commission is a party for the purpose of securing compliance with this Consent Order or as otherwise required by law, upon reasonable written notice to respondents or their United States counsel.

IX
(Governmental Action)

This Consent Order shall not prohibit compliance with any order or direction of any government, governmental body or agency having jurisdiction over a respondent, provided, however, that such compliance shall not constitute a defense to a violation of this Consent Order except insofar as such a defense is recognized under United States law.

Nothing contained in this Consent Order shall be construed to constitute a waiver of any defense recognized under the laws of the United States, which a respondent may have as a result of compliance with any order or directive of any government, governmental body or agency having jurisdiction over such respondent.

Compliance by any respondent with any order or directive of the Japanese Government issued in implementation of and in accordance with the provisions of the agreement between the Government of the United States of America and the Government of Japan relating to color television receivers as set forth in notes between said governments dated May 20, 1977, shall not be a violation of this Consent Order.

X
(Enforcement)

Each provision of this Consent Order shall be construed independently of any other provision, and compliance with any one provision shall not excuse a violation of any other provision.

Should the Commission have reason to believe that a violation has occurred, a hearing shall be held upon notice. The issues at the hearing shall be: (a) whether a violation has occurred in fact, and (b) if so, a determination of the appropriate remedy. In determining whether there has been a violation, the Commission may consider evidence of any special competitive or economic circumstances presented by any respondent in defense of the alleged violation.

Nothing contained herein shall limit any right of review provided by law.

XI
(Service of Consent Order)

Each respondent is ordered and directed to:

(A) Serve, within thirty (30) days after the effective date of this Consent Order, a conformed copy of this Consent Order upon each of its respective officers, directors, managing agents, agents, and employees who have any responsibility for the marketing, distribution or sale of such respondent's color television receiving sets in the United States or for shipment or export to the United States for resale in the United States;

(B) Serve, within thirty (30) days after the succession of any of the persons referred to in Section XI(A) above, a conformed copy of this Consent Order upon each successor;

(C) Maintain such records as will show the name, title and address of each such officer, director, managing agent, agent and employee upon whom the Consent Order has been served, as described in Section XI(A) and (B) above, together with the date on which service was made; and

(D) The obligations set forth in Section XI(B) and (C) above shall remain in effect for a period of seven (7) years after the effective date of this Consent Order.

XII
(Effective Date)

This Consent Order is to become effective as of the date of its issuance by the Commission. Its provisions shall not apply to color television receiving sets imported and sold by respondents prior to such issuance, except that such sets which are imported and sold in the period from the beginning of the fiscal year beginning in 1977 but prior to the issuance of this Consent Order shall be included for the purpose of compliance with items (3) and (5) of the first paragraph of Section VII above.

Its provisions also shall not apply to color television receiving sets sold by the respondent to a United States customer for importation into the United States prior to such issuance, except such sets which are delivered and paid for in the period from the beginning of the fiscal year beginning in 1977 but prior

to such issuance shall be included for the purpose of compliance with items (3) and (5) of the first paragraph of Section VII, above.

XIII
(Modification)

This Consent Order constitutes a settlement and resolution of Investigation No. 337-TA-23 and the Complaint and the Consolidated Amended Complaint, and does not constitute a determination of any of the factual or legal issues raised in the proceeding or an admission that any respondent has engaged in the conduct prohibited hereby, or an admission that said conduct violates Section 337. Any of the parties to this Consent Order may apply to the Commission at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Consent Order, for the amendment or modification of any of the provisions thereof, or for the enforcement or compliance therewith.

Dated:

By Order of the Commission:

_____
Secretary

The above Order is
Consented to:

For Complainants:

BY:_____

CURTIS, MALLET-PREVOST, COLT & MOSLE

BY:_____

For Respondents:

REID & PRIEST

By:_____
Counsel for Mitsubishi International Corporation

For Commission Investigative Staff:

By: _____ _____

# APPENDIX A

This Appendix A is for reporting purposes only and neither this Appendix A, nor anything set forth in this Consent Order, constitutes a concession or admission by any respondent regarding a standard of cost pursuant to which a finding of predatory pricing may be made.

Total costs attributable to color television receiving sets for reporting purposes shall include (1) all costs directly related to the manufacture, marketing and sale of such color television receiving sets, and (2) an appropriate allocation of all costs incurred by respondents related in part to the manufacture, marketing and sale of color television receiving sets and related in part to a product or business other than color television receiving sets, and (3) an appropriate allocation of all other costs incurred by respondents that are not related specifically to any product or business. All costs and all allocated costs shall be determined on the basis of generally accepted United States accounting principles applied on a consistent basis.* It is expressly provided, however, that nothing contained herein shall require any respondent to change its existing accounting systems and methods. Consistent with the foregoing, costs shall include, but will not be limited to, the following:

---

*The "Special Report" provided for under Section VII of this Consent Order shall be in accordance with generally accepted United States accounting principles. However, it will not constitute non-compliance with this Consent Order if annual reports prepared subsequent to the Special Report are not prepared on a basis consistent with the Special Report.

1. Materials (including integrated circuits, transistors, diodes, printed circuit board, resistors (fixed and potentiometers), capacitors (ceramic, electrolytic, wound film), coils and transformers, cathode ray tube, deflection yoke, cabinet, tuner, metal components, plastic components, speaker, and miscellaneous components).

2. Direct labor (including skilled, semiskilled and unskilled production, technician, testing personnel and an allocation of fringe benefits such as bonuses and incentives, vacations, holidays, health care, pension, paid sick leave and other time off, group insurance, employee welfare, disability/wage continuation, etc.).

3. Factory indirect labor (including semiskilled, skilled labor, technicians, craftsmen, foremen, and an appropriate allocation of fringe benefits such as referred to in Paragraph 2 above).

4. Distribution costs outside the United States (including warehousing, handling, transportation and insurance).

5. Export expenses (including cartage/drayage, shipping charge, and brokerage charge).

6. Shipping costs (including ocean freight, insurance, duties and customs clearance charges).

7. Distribution costs in the United States (including warehousing, handling, freight-in and insurance).

8. Marketing and sales costs in the United States and outside the United States (including freight-out, commissions/

bonuses/sales salaries, incentives, cooperative advertising expense, customer financing, warranty, rebates, sales administration, reserve for bad debts arising from the sale of color television receivers occurring on or after the effective date of this Consent Order, sales returns and allowances and all deductions from revenues not accounted on invoices).

9. Factory overhead (including supplies/expenses, tooling and utility costs, occupancy costs, testing/qc/burn-in, general overhead, plant management, accounting, personnel, quality control supervision, industrial engineering, production engineering, maintenance, purchasing/procurement, inventory control, depreciation, taxes other than income taxes, interest, product design, product engineering, and royalties).

10. General administrative costs (including divisional and corporate-wide expenses such as home office administrative costs, interest, taxes other than income taxes, research and development, product design and product engineering, accounting and auditing and legal incurred in the ordinary course of business, public relations and administrative salaries).

UNITED STATES INTERNATIONAL TRADE COMMISSION

Washington, D.C.

| | | |
|---|---|---|
| In the Matter of | : | |
| | : | Investigation No. 337-TA-23 |
| CERTAIN COLOR TELEVISION RECEIVING SETS | : | |

## CONSENT ORDER

Complainants GTE Sylvania Incorporated and Philco Consumer Electronics Corporation, having filed a Complaint and Consolidated Amended Complaint; and

The United States International Trade Commission ("Commission") having initiated an investigation pursuant to Notices of Investigation; and

The respondent having appeared and denied the material allegations of the Complaint and Consolidated Amended Complaint; and

The Commission having determined it has jurisdiction of the subject matter of this proceeding and the Commission having determined that the Consolidated Amended Complaint states a cause of action under Section 337 of the Tariff Act of 1930, 19 U.S.C. Section 1337 and all acts amendatory thereof and supplementary thereto; and

Before the making of any findings of fact or conclusions of law, and before the hearing or adjudication of any issue of fact or law herein, and the respondent having denied any violation of Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. Section 1337 ("Section 337"), or as alleged in the Complaint and Consolidated Amended Complaint, and all of the parties hereto having consented to the entry of this Consent Order;

IT IS HEREBY ORDERED THAT:

I

(Tariff Act of 1930)

The Commission has, and respondent concedes that the Commission has, jurisdiction of the subject matter of this investigation and over the respondent signatory hereto for the purposes of issuing and enforcing this Consent Order, and the Protective Order dated September 17, 1976.

II

(Settlement Purposes Only)

This Consent Order is for settlement purposes only and does not constitute a determination by the Commission or an admission by respondent that the law has been violated as alleged in the Complaint and Consolidated Amended Complaint or Notices of Investigation or otherwise.

III

(Definitions)

As used in this Consent Order:

(A) "Complainants" shall mean GTE Sylvania Incorporated and Philco Consumer Electronics Corporation, and each of them.

(B) "Respondent" shall mean Mitsubishi Electric Corporation.

(C) "Person" shall mean an individual, or any non-governmental partnership, firm, association, corporation or other legal or business entity other than the above respondent or its majority owned and/or controlled subsidiaries, their successors or assigns.

(D) "United States" shall mean the fifty States, the District of Columbia and Puerto Rico.

(E) "Color Television Receiving Set" shall mean any color television receiving set manufactured in any country other than the United States for shipment or export to the United States for resale in the United States or for import into the United States for resale in the United States. Color television receiving sets shall include:

(1) A finished color television receiving set which at the time of importation is fully assembled, whether or not tested or packaged, for distribution to the purchaser as a color television receiving set; and

(2) A color television receiving set which at the time of importation is not fully assembled, whether or not in the cabinet, but substantially complete as a finished color television receiving set, as defined in Subsection (1) above, at least to the point where the color picture tube is in place as part of the set; and

(3) A kit which at the time of importation contains all of the components necessary to make it a color television receiving set as defined in Subsections (1) and (2) above.

IV

(Applicability)

The provisions of this Consent Order shall apply to respondent and to its officers, directors, employees, controlled (whether by stock ownership or otherwise) and/or majority owned business entities, successors and assigns, and to each of them, and to all other persons who receive actual notice of this Consent Order by service in accordance with Section XI hereof.

V

(Individual Conduct Prohibited)

Respondent shall not:

(1) Give to any person a discount, allowance, credit, rebate, gratuity, financing and credit benefit, or any

8. Marketing and sales costs in the United States and outside the United States (including freight-out, commissions/bonuses/sales salaries, incentives, cooperative advertising expense, customer financing, warranty, rebates, sales administration, reserve for bad debts arising from the sale of color television receivers occurring on or after the effective date of this Consent Order, sales returns and allowances and all deductions from revenues not accounted on invoices).

9. Factory overhead (including supplies/expenses, tooling and utility costs, occupancy costs, testing/qc/burn-in, general overhead, plant management, accounting, personnel, quality control supervision, industrial engineering, production engineering, maintenance, purchasing/procurement, inventory control, depreciation, taxes other than income taxes, interest, product design, product engineering, and royalties).

10. General administrative costs (including divisional and corporate-wide expenses such as home office administrative costs, interest, taxes other than income taxes, research and development, product design and product engineering, accounting and auditing and legal incurred in the ordinary course of business, public relations and administrative salaries).

other monetary inducement to purchase, or other deduction or term which results directly or indirectly in a reduction of the price of a color television receiving set sold in the United States or for shipment or export to the United States, for resale in the United States, for which appropriate descriptive financial records are not maintained by respondent; or

(2) Unlawfully hinder, restrict, limit or prevent directly or through another, any company incorporated in the United States or any subsidiary thereof from buying or selling color television receiving sets from or to any other person in the United States or in Japan in a manner which has an effect on United States commerce and which is in connection with the importation of color television receiving sets into the United States or the sale of such imported sets in the United States or for shipment or export to the United States for resale in the United States.

VI

(Concerted Conduct Prohibited)

Respondent in connection with the importation of color television receiving sets into the United States or for shipment or export to the United States for resale in the United States shall not unlawfully with any other person or

persons, initiate, enter into, adhere to, maintain or further, directly or indirectly, any contract, agreement, combination, conspiracy, understanding, plan or program, for the purpose or with the effect of:

(1) Raising, lowering, fixing, determining, establishing, controlling, maintaining or stabilizing the price, price level, price ceiling, price floor, net price, discount, rebate, allowance, mark-up, profit margin, warranty, or any term or condition of sale at which any other person sells any color television receiving set in the United States or for shipment or export to the United States for resale in the United States; or

(2) Allocating, dividing, rotating, apportioning, assigning, limiting or imposing or attempting to impose any limitations or restrictions respecting (a) the person or persons to whom, or (b) the markets or territories in which, or (c) the volume at which any person may sell color television receiving sets in the United States or for shipment or export to the United States for resale in the United States; or

(3) Hindering, restricting, limiting, or preventing any person from buying or selling color television receiving sets from or to any other person in the United States in a manner which has an effect on United States commerce.

VII

(Reporting)

With respect to each of the five consecutive fiscal years the first of which begins in 1977, respondent shall separately review, determine and report in English under oath to the Commission, on an annual basis, the following: (1) total unit volume of all color television receiving sets sold in the United States or for shipment or export to the United States for resale in the United States, (2) total unit volume in each screen size for such color television receiving sets, (3) aggregated revenues for all such color television receiving sets, (4) aggregated revenues in each screen size for such color television receiving sets, (5) total aggregated costs as defined in Appendix A for such color television receiving sets, (6) total aggregated costs as defined in Appendix A in each screen size for such color television receiving sets, and (7) whether any such color television receiving set has been sold for less than the total variable costs of such set.

The reports provided for herein shall contain a statement of the manner in which such review and determination was conducted and the factors that were considered, including the methods or method of cost allocation. All amounts set forth in such reports shall be expressed in United States dollars, with disclosure of any exchange rate(s) used to

calculate such dollar amounts, including the date(s) on which such rate(s) were controlling.

In addition, respondent shall provide a statement of its independent United States auditor that the independent United States auditor has reviewed respondent's records in conjunction with its annual audit and that the independent United States auditor has reviewed the report required hereby and on the basis of such annual audit does not find any inconsistency between the data in the report and any information which it learned during its annual audit.

Such report, containing the information provided for in items (1) through (7) of the first paragraph of this Section VII, with the oath of the respondent and the statement of the independent United States auditor, shall be delivered to the Commission not later than one hundred and fifty (150) days after the close of each fiscal year, provided, however, that a preliminary report containing the information required under items (1), (2), (3) and (4) of the first paragraph of this Section VII shall be delivered to the Commission not later than ninety (90) days after the close of each fiscal year.

All such reports delivered pursuant to the provisions of this Section shall be maintained for a period of five (5) years after the date of such delivery but no later than seven (7) years after the effective date of this Order and

thereafter the reports shall be returned to the filing respondent.

All such reports shall be deemed to be proprietary and business confidential and no information contained in or obtained from any such report shall be divulged by any representative of the Commission to any person other than a duly authorized representative of the Commission, except as required in the course of a legal proceeding or as otherwise required by law upon reasonable written notice to the respondent.

In determining whether respondent is in compliance with the provisions of Sections V and VI hereof, the Commission may consider evidence that the information provided in the reporting requirements of this Section VII is incomplete or inaccurate.

VIII

(Inspection and Compliance)

(A) In determining whether there has been compliance with the prohibitions of this Consent Order, the Commission may consider evidence of any material differences between the revenues and costs reported pursuant to the reporting requirements of Section VII hereof. Further, in determining whether there has been compliance with the provisions of this Consent Order, the Commission may consider

evidence of all special economic and competitive circumstances presented by respondent.

(B) For the purposes of securing compliance with this Consent Order, respondent shall retain any and all records made and received in the usual and ordinary conduct of its color television receiving set business, whether in detail or in summary form, for a period of three (3) years from the close of the fiscal year to which they pertain, and in summary form for a period of seven (7) years from the close of the fiscal year to which they pertain from which the accuracy of the statements and reports described in Section VII above, may be determined, provided, however, that no such record need be retained for more than two years from the close of the last fiscal year for which a report is required.

(C) For the purpose of determining or securing compliance with this Consent Order, and for no other purposes, and subject to any privilege recognized by federal courts of the United States, during the period from filing the first report required herein up to and including two years from the close of the last fiscal year for which a report is required, duly authorized representatives of the Commission shall, upon reasonable written notice by the Commission or its staff, to the respondent made, be permitted access to and the right to inspect and copy in said respondent's principal office during the office hours of said respondent, and in the

presence of counsel or other representative if said respondent chooses, all books, ledgers, accounts, correspondence, memoranda, and other records and documents, both in detail and in summary form, in the possession of or under the control of said respondent relating to any of the matters contained in this Consent Order and further shall have access to and the right to inspect and copy the records of respondent's independent United States auditors used in reporting upon respondent's reports required in Section VII hereof.

(D) Respondent shall make available for consultation with the duly authorized representative of the Commission, in the presence of counsel, the individual or individuals who were responsible for the preparation of the report described in Section VII hereof and/or who have knowledge of the substance of the matters contained therein.

(E) No information obtained by the means provided in Section VIII shall be divulged by any representative of the Commission to any person other than a duly authorized representative of the Commission, except as required in the course of legal proceedings to which the Commission is a party for the purpose of securing compliance with this Consent Order or as otherwise required by law, upon reasonable written notice to respondent or its United States counsel.

IX

(Governmental Action)

This Consent Order shall not prohibit compliance with any order or direction of any government, governmental body or agency having jurisdiction over respondent, provided, however, that such compliance shall not constitute a defense to a violation of this Consent Order except insofar as such a defense is recognized under United States law.

Nothing contained in this Consent Order shall be construed to constitute a waiver of any defense recognized under the laws of the United States, which respondent may have as a result of compliance with any order or directive of any government, governmental body or agency having jurisdiction over such respondent.

Compliance by respondent with any order or directive of the Japanese Government issued in implementation of and in accordance with the provisions of the agreement between the Government of the United States of America and the Government of Japan relating to color television receivers as set forth in notes between said governments dated May 20, 1977, shall not be a violation of this Consent Order.

X

(Enforcement)

Each provision of this Consent Order shall be construed independently of any other provision, and compliance

with any one provision shall not excuse a violation of any other provision.

Should the Commission have reason to believe that a violation has occurred, a hearing shall be held upon notice. The issues at the hearing shall be: (a) whether a violation has occurred in fact, and (b) if so, a determination of the appropriate remedy. In determining whether there has been a violation, the Commission may consider evidence of any special competitive or economic circumstances presented by respondent in defense of the alleged violation.

Nothing contained herein shall limit any right of review provided by law.

XI

(Service of Consent Order)

Respondent is ordered and directed to:

(A) Serve, within thirty (30) days after the effective date of this Consent Order, a conformed copy of this Consent Order upon each of its respective officers, directors, managing agents, agents, and employees who have any responsibility for the marketing, distribution or sale of such respondent's color television receiving sets in the United States or for shipment or export to the United States for resale in the United States;

(B) Serve, within thirty (30) days after the succession of any of the persons referred to in Section XI(A) above, a conformed copy of this Consent Order upon each successor;

(C) Maintain such records as will show the name, title and address of each such officer, director, managing agent, agent and employee upon whom the Consent Order has been served, as described in Section XI(A) and (B) above, together with the date on which service was made; and

(D) The obligations set forth in Section XI(B) and (C) above shall remain in effect for a period of seven (7) years after the effective date of this Consent Order.

XII

(Effective Date)

This Consent Order is to become effective as of the date of its issuance by the Commission. Its provisions shall not apply to color television receiving sets imported and sold by respondent prior to such issuance, except that such sets which are imported and sold in the period from the beginning of the fiscal year beginning in 1977 but prior to the issuance of this Consent Order shall be included for the purpose of compliance with items (3) and (5) of the first paragraph of Section VII above.

Its provisions also shall not apply to color television receiving sets sold by respondent to a United States customer for importation into the United States prior to such issuance, except such sets which are delivered and paid for in the period from the beginning of the fiscal year beginning in 1977 but prior to such issuance shall be included for the purpose of compliance with items (3) and (5) of the first paragraph of Section VII, above.

XIII

(Modification)

This Consent Order constitutes a settlement and resolution of Investigation No. 337-TA-23 and the Complaint and the Consolidated Amended Complaint, and does not constitute a determination of any of the factual or legal issues raised in the proceeding or an admission that respondent has engaged in the conduct prohibited hereby, or an admission that said conduct violates Section 337. Any of the parties to this Consent Order may apply to the Commission at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Consent Order, for the amendment or modification of any of the provisions thereof, or for the enforcement or compliance

therewith.

Dated:

By Order of the Commission:

_____
Secretary

The above Order is Consented to:

For Complainants:

By Edward J. Goldstein
Edward J. Goldstein

CURTIS, MALLET-PREVOST, COLT & MOSLE

By _____

Counsel for GTE Sylvania Incorporated and Philco Consumer Electronics Corporation

For Respondent:

BAKER & MCKENZIE

By _____

Counsel for Mitsubishi Electric Corporation

For Commission Investigative Staff:

By _____
Commission Investigative Attorney

# APPENDIX A

This Appendix A is for reporting purposes only and neither this Appendix A, nor anything set forth in this Consent Order, constitutes a concession or admission by the respondent regarding a standard of cost pursuant to which a finding of predatory pricing may be made.

Total costs attributable to color television receiving sets for reporting purposes shall include (1) all costs directly related to the manufacture, marketing and sale of such color television receiving sets, and (2) an appropriate allocation of all costs incurred by respondent related in part to the manufacture, marketing and sale of color television receiving sets and related in part to a product or business other than color television receiving sets, and (3) an appropriate allocation of all other costs incurred by respondent that are not related specifically to any produce or business. All costs and all allocated costs shall be determined on the basis of generally accepted United States accounting principles applied on a consistent basis. It is expressly provided, however, that nothing contained herein shall require the respondent to change its existing accounting systems and methods. Consistent with the foregoing, costs shall include, but will not be limited to, the following:

1. Materials (including integrated circuits, transistors, diodes, printed circuit board, resistors (fixed and potentiometers), capacitors (ceramic, electrolytic, wound film), coils and transformers, cathode ray tube, deflection yoke, cabinet, tuner, metal components, plastic components, speaker, and miscellaneous components).

2. Direct labor (including skilled, semiskilled and unskilled production, technician, testing personnel and an allocation of fringe benefits such as bonuses and incentives, vacations, holidays, health care, pension, paid sick leave and other time off, group insurance, employee welfare, disability/wage continuation, etc.).

3. Factory indirect labor (including semiskilled, skilled labor, technicians, craftsmen, foremen, and an appropriate allocation of fringe benefits such as referred to in Paragraph 2 above).

4. Distribution costs outside the United States (including warehousing, handling, transportation and insurance).

5. Export expenses (including cartage/drayage, shipping charge, and brokerage charge).

6. Shipping costs (including ocean freight, insurance, duties and customs clearance charges).

7. Distribution costs in the United States (including warehousing, handling, freight-in and insurance).